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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, submitted pursuant to Commission resolution 2000/9

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Executive summary

The development of the human right to adequate housing as a legal and advocacy tool has gained momentum during the past decade, particularly through the consistent work of civil society. The related embedding of this right in the United Nations human rights programme and as a key component of the Habitat Agenda have ensured the recognition of the right to housing as a cornerstone human right. This has resulted in recognition of a housing rights framework and the critical relevance of a gender and housing rights perspective.

Notwithstanding this, it is clear that in reality, the general housing situation is deteriorating for the majority of poor and vulnerable groups. Available statistical estimates suggest that there are at least 100 million people in the world living with no shelter at all. The number of homeless persons is increasing across the world. Between 30 and 70 million children worldwide are living on the streets. Further exacerbating this situation is the trend to ever more rapid urbanization, particularly in Africa and South-East Asia, and growing poverty in countries with a predominantly rural population.

Against this backdrop, the establishment of the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living by the Commission on Human Rights in resolution 2000/9 is both welcome and timely also in view of the forthcoming review of the 1996 Habitat Agenda at the Special Session of the General Assembly in June 2001. Throughout his mandate, it is the intention of the Special Rapporteur to promote greater realization and operationalization of the right to adequate housing through a constructive approach, by closing the gap between legal recognition and practice and seeking solutions to the grave housing and living conditions found globally.

This preliminary report sets out the framework for the Special Rapporteur's work and is divided into four parts. The introduction outlines the mandate and approach. The first section sets out the legal status of the right and reviews the past and ongoing work both within and outside United Nations human rights mechanisms. The second section identifies impediments to the right and issues that merit further analysis, particularly linkages between the right to adequate housing and the processes of globalization. The third section identifies and reviews actions to be undertaken by Member States, international institutions and civil society for greater realization of the right. The report concludes with preliminary recommendations for consideration by the Commission.

Introduction

1. On 17 April 2000, at its fifty-sixth session, the Commission on Human Rights adopted resolution 2000/9 in which it decided to appoint, for a period of three years, a special rapporteur whose mandate will focus on adequate housing as a component of the right to an adequate standard of living, as reflected in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, and article 27, paragraph 3, of the Convention on the Rights of the Child, and on the right to non-discrimination as reflected in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. The Special Rapporteur was requested: (a) to report on the status, throughout the world, of the realization of the rights that are relevant to the mandate; (b) to promote, as appropriate, cooperation among and assistance to Governments in their efforts to secure these rights; (c) to apply a gender perspective; (d) to develop a regular dialogue and discuss possible areas of collaboration with Governments, relevant United Nations bodies, specialized agencies, international organizations in the field of housing rights, inter alia the United Nations Centre for Human Settlements (UNCHS/Habitat), non-governmental organizations and international financial institutions, and to make recommendations on the realization of the relevant rights; (e) to identify possible types and sources of financing for relevant advisory services and technical cooperation; (f) to facilitate, where appropriate, the inclusion of issues relating to relevant United Nations missions, field presences and national offices; and (g) to submit to the Commission on Human Rights an annual report covering the activities relating to the mandate.

3. The Commission also adopted, at its fifty-sixth session, resolution 2000/13 entitled "Women's equal ownership of, access to and control over land and the equal rights to own property and adequate housing" in which, inter alia, it encouraged all human rights treaty bodies, special procedures and other human rights mechanisms, regularly and systematically to take a gender perspective into account in the implementation of their mandates, including taking into account the resolution.

4. The right to adequate housing, as well as other economic, social and cultural rights, needs to be framed in the context of today's reality, wherein between one fifth and one quarter of the world's population live in absolute poverty. Of the world's 6 billion people, 2.8 billion people live on less than two dollars per day and 1.2 billion live on less than one dollar a day. Women comprise 70 per cent of those living in absolute poverty. Most of the poor are forced to live without access to such basic amenities as food, clothing and shelter.

5. According to UNCHS, it is estimated that in the South, 600 million urban dwellers live in overcrowded and poor quality housing with inadequate provision of water, sanitation, drainage and garbage collection, putting their lives and health continually at risk. So do over 1 billion persons living in rural areas.

6. Homelessness is not a phenomenon exclusive to developing countries and exists, for example, at the rate of 1.5 to 2.5 people per 1,000 in the United States of America and between 4 and 12 per 1,000 in France, Germany and the United Kingdom.

7. Statistics, however, do not fully capture the global state of housing. Indeed, an improved understanding of the state of housing conditions is revealed through the consideration of the following contemporary forms of distressed housing: slums and squatter settlements; old buses; shipping containers; pavements; railway platforms; streets and roadside embankments; cellars; staircases; rooftops; elevator enclosures; cages; cardboard boxes; plastic sheets; aluminium and tin shelters.

8. Faced with the scale of the problem, it is the contention and the point of departure for the Special Rapporteur's mandate that only the human rights paradigm in general, and a housing and land rights approach in particular, can offer the radical and systemic changes that are necessary to offer solutions to this crisis facing humanity. Based on the exhaustive legal basis of the right to housing (see sect. A below) and on the considerable civil society activity, both at a conceptual and a practical level, the Special Rapporteur would like to propose the following working definition for the right to adequate housing:

> "The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity."[1]

9. This definition encompasses a wide-ranging interpretation of the right to housing keeping in mind the critical relevance of this human right to the lives of millions worldwide and in full consonance with the indivisible nature of human rights. It is the intention of the Special Rapporteur, during the course of his mandate, to test this holistic conception of the right to housing and to detail the nature of State and civil society actions required to protect, promote, respect and, where necessary, restore the right to adequate housing.

10. The Special Rapporteur would like to acknowledge the lessons learnt from a close study of the work of the Committee on Economic, Social and Cultural Rights and the Sub-Commission on the Promotion and Protection of Human Rights. He is inspired by the constructive approach adopted by the Committee in its dealings with States and looks forward to a close working relationship with the Committee.

11. Since his appointment the Special Rapporteur has met with the High Commissioner and the Deputy High Commissioner for Human Rights. He acknowledges their advice and encouragement. The Special Rapporteur is also grateful for the support of Habitat International Coalition and its Housing and Land Rights Committee and the International NGO Committee on Human Rights in Trade and Investment (INCHRITI).

I. LEGAL STATUS OF THE RIGHT TO ADEQUATE HOUSING

12. Since the proclamation of the Universal Declaration of Human Rights (UDHR) in 1948, the right to adequate housing has found explicit recognition among a wide range of international instruments. Article 25.1 of the Declaration states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in

circumstances beyond his control." The present review considers the provisions of international human rights instruments, other declarations and guidance, as well as developments within and outside of the United Nations human rights mechanisms that have contributed to clarifying the legal status of the right to adequate housing.

A. Legal sources

13. On the basis of the provisions established in UDHR, the right to adequate housing was further elaborated and reaffirmed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. Article 11.1 of the Covenant states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

14. The right to adequate housing is also recognized in several other international instruments that have focused on the need to protect the rights of particular groups. Article 14.2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women (1979) states that: "States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

15. Article 16.1 of the Convention on the Rights of the Child (1989) states that: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation." Article 27.3 states that: "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

16. Article 21 of the Convention relating to the Status of Refugees (1951) provides that: "As regards housing, the Contracting States, insofar as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

17. Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) obliges States "to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... (e) ... (iii) the right to housing".

18. Article 17.1 of the International Convention on Civil and Political Rights (1966) states that: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

19. Article 43.1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, currently not yet in force) states that: "Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents."

20. Although not legally binding, various references and provisions regarding housing and land rights and living conditions can be found in numerous international declarations and recommendations. Of particular relevance among them are: the Declaration of the Rights of the Child (1959, principle 4), International Labour Organization (ILO) Recommendation No. 115 concerning Worker's Housing (1961, sect. II, para. 2; sect. III, para. 8.2 (b); sect. VI, para. 19; and Suggestions Concerning Methods of Application, sect. I, para. 5), the Declaration on Social Progress and Development (1969, Part II, art. 10), the Declaration on the Rights of Disabled Persons (1975, art. 9), the Vancouver Declaration on Human Settlements (1976, sect. III.8 and chap. II.A3), the UNESCO Declaration on Race and Racial Prejudice (1978, art. 9.2), ILO Recommendation No. 162 concerning Older Workers (1980, sect. II, para. 5 (g)), the Declaration on the Right to Development (1986, art. 8.1).

21. Issues related to the right to adequate housing were also highlighted in declarations and programmes of action adopted by several of the United Nations global conferences and summits held during the last decade, including Agenda 21 adopted at the United Nations Conference on Environment and Development (1992), the Copenhagen Declaration and the Programme of Action of the World Summit for Social Development (1995), the Beijing Declaration and Platform for Action of the Fourth World Conference on Women (1995) and the Habitat Agenda of the second United Nations Conference on Human Settlements (Habitat II) (1996).

22. Provisions related to the right to adequate housing from these and other declarations and recommendations are available in OHCHR Fact Sheets No. 21 (The Human Rights to Adequate Housing) and No. 25 (Forced Eviction and Human Rights) as well as other links on the OHCHR Web site page on housing (http://www.unhchr.ch/html/menu2/i2ecohou.htm).

B. Interpreting the legal concept of housing rights

23. Following the adoption of ICESCR, significant efforts have been made during the last two decades, both within and outside of the United Nations human rights mechanisms, in further clarifying and expanding the legal concept of the right to adequate housing contained in its article 11.1. An overview of the contributions of the Committee on Economic, Social and Cultural Rights and other treaty bodies, the Sub-Commission on the Promotion and Protection of Human Rights, the Commission on Human Settlements and UNCHS (Habitat), and civil society is presented below.

1. Committee on Economic, Social and Cultural Rights

24. The Committee on Economic, Social and Cultural Rights (CESCR), devoted a day of general discussion to the issue of the right to adequate housing at its fourth session in 1990,[2] and in December 1991 the Committee at its sixth session adopted General Comment No. 4 on the right to adequate housing.[3] The General Comment reflects both the holistic conception of the right and the value it gains from the aspect of adequacy. The Committee advises States parties not to interpret the right to housing narrowly or restrictively as "merely having a roof over one's head or ... as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity" (para. 7).

25. Based on this broad interpretation, the General Comment identified seven aspects of the right to housing that determine "adequacy": (a) legal security of tenure including legal protection against forced evictions; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility for disadvantaged groups; (f) location and (g) cultural adequacy (para. 8).

26. Furthermore, at its sixteenth session in 1997, the Committee adopted General Comment No. 7 on forced eviction,[4] which defined the term as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (para. 4). General Comment No. 7 recalls that in accordance with article 2.1 of the Covenant, States are obliged to use "all appropriate means", including legislation, to protect the rights recognized in the Covenant and that "legislation against forced evictions is an essential basis upon which to build a system of effective protection" (para. 10).

27. Cross-references to the right to adequate housing can also be found in other general comments adopted by the Committee.[5] General Comment No. 5 (eleventh session, 1994) on persons with disabilities refers to the effects of disability-based discrimination on housing (paras. 15 and 22). Quoting rule 4 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1996), the General Comment states that, in addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that "support services, including assisting devices [are available] for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights" (para. 33). General Comment No. 6 (thirteenth session, 1995) on the economic, social and cultural rights of older persons[6] recalls that the International Plan on Ageing emphasizes, inter alia, "... that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account" (para. 33).

28. The content and nature of the guidelines and general comments adopted reflect the movement towards a broader and more holistic interpretation of the right to adequate housing. This is most evident in its latest General Comment No. 14, adopted by the Committee on the right to the highest attainable standard of health[7] (twenty-second session, 2000), which emphasizes the interlinkages with other rights: "The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water

and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions ..." (para. 11). Detailing the core obligations arising from State obligations on the right to health, the Committee determined that these include ensuring access to basic shelter, housing and sanitation and an adequate supply of safe and potable water (para. 43).

29. The Special Rapporteur has made a preliminary survey of concluding observations adopted by the Committee since its tenth session 1993, and found that specific references were made to legal and other questions related to the right to adequate housing in concluding observations covering more than 50 countries and territories. He is inspired by the rigour with which the Committee has been addressing this fundamental human right. In particular, the Committee has continued to elaborate on the matter of the indivisibility of all human rights and the interrelatedness of the right to adequate housing with other economic, social and cultural rights, as enunciated in paragraph 7 of General Comment No. 4. The question of the right to adequate housing has often been examined in conjunction with other rights, including health, education, water and food, as well as within the non-discrimination provisions of the Covenant. The Special Rapporteur will review these findings in greater detail in a future report.

30. The Committee has advised State parties to introduce institutional arrangements within the government administration to ensure that their obligations under the Covenant are taken into account at an early stage also in the formulation of national policies on issues such as housing, health and education. The Committee has pointed out that the lack of detailed information with regard to housing and forced evictions has impeded the full consideration of State parties' reports and that the States parties should, if necessary, seek assistance, including international cooperation. The Committee has become increasingly conscious of international economic and development cooperation that has taken place outside the regime of human rights law and has taken note of violations of housing rights, including forced evictions, as a function of government policies resulting from deregulation and privatization as well as structural adjustment programmes.

31. In the view of the Special Rapporteur, the Committee has important functions in further clarifying the right and setting standards. In this respect, he is of the view that the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, in addition to strengthening the recognition of economic, social and cultural rights in general, would enhance the realization of the right to adequate housing. The examination of individual cases of housing rights violations would assist in bringing about clarity and precision to the discussion of housing rights, thereby improving the understanding of the issues at stake. Moreover, the group complaint procedures would allow the Committee to address large-scale housing rights violations of vulnerable and marginalized communities, including indigenous and tribal peoples. The complaint and ensuing investigation procedures also would elucidate conflicting obligations imposed upon States by international human rights treaties and international economic agreements that, inter alia, result in the regression of human rights.

2. Work of other treaty bodies

32. The Special Rapporteur also recognizes the important work that has been carried out by other treaty bodies, namely, the Committee on the Rights of the Child, the Committee on the

Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination. For the purpose of this report, he also undertook a similar exercise in reviewing concluding observations adopted by these bodies since 1992 and other recent developments. While space allows only a brief summary of findings here, more detailed analysis will be presented in the next report.

33. The Committee on the Rights of the Child has, since its second session in 1992, consistently affirmed the interlinkages of the rights of the child with other rights, particularly in extreme situations of poverty, conflict, disasters and social inequalities. In reviewing reports of the States parties, the Committee has been paying particular attention to the protection of children belonging to vulnerable groups, in particular displaced and refugee children, disabled and homeless children, as well as children subject to abuse or violence within the family. In recent years, the Committee has been particularly concerned by the situation of children living and working on the streets and children living on their own and without proper housing, and by the particular vulnerability of girls in these situations.

34. The Committee on the Elimination of Discrimination against Women has focused its attention on the equal right of women to access, own and inherit land, as this is a major factor affecting the situation of rural women. Concerns have been expressed at the negative impacts of globalization and macroeconomic policies on the rural economy, and land distribution through market mechanisms in particular. Even in countries where the law provides equality between men and women with regard to land, the Committee cautions that often prejudices and customary rights are hindering the implementation of the law.

35. The Committee has also been concerned about the equal treatment of women in various government schemes for housing allowances, State loans for housing and access to credit, as well as equal provision of workers' housing for women. The Committee encourages the States parties to give full attention to the needs of rural women and to ensure an active and participatory role in the design, implementation and monitoring of all policies and programmes that are intended to benefit them, particularly women who are heads of household and their families, including in areas such as access to health and social services, income-generating projects and housing.

36. The Special Rapporteur was particularly encouraged by the entry into force on 22 December 2000 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, with ratification by the first group of 10 States parties. The Optional Protocol can be seen as a tangible recognition of the particular challenges women face in seeking redress for their human rights violations. It provides for individual and/or group complaints and inquiry procedures by the Committee. In respect of housing rights, the Optional Protocol will provide an additional monitoring mechanism and an opportunity for inquiry into systematic violations of women's housing rights.

37. The Committee on the Elimination of Racial Discrimination, in its General Recommendation XIX adopted at its forty-seventh session in 1995,[8] observed that in many cities residential patterns are influenced by group differences in income which are sometimes combined with differences of race, colour, descent, national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are

mixed with other grounds. The Committee also highlighted the issue of residential segregation and its far-reaching consequences in economic, social and psychological aspects in its statement to the second United Nations Conference on Human Settlements (Habitat II) in 1996.[9]

38. In a growing climate of racial and ethnic divisions across the world, the Special Rapporteur notes, in addition to the provision on the right to housing in article 5 (e) (iii), of the International Convention on the Elimination of All Forms of Racial Discrimination, the obligation on States contained in article 3 to "particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". In this context, the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in South Africa in September 2001, offers a unique opportunity to institute concrete measures against racial discrimination in housing and land rights. The Special Rapporteur is of the view that the World Conference should urge States to strengthen their monitoring of the situation of marginalized racial and ethnic groups, through periodic sampling and compilation of statistical information disaggregated by race or ethnic group, particularly with regard to fundamental economic and social indicators including housing. Furthermore, the World Conference should urge States to enact or strengthen legislative measures prohibiting racial discrimination in all areas of the public and private sectors, including housing and land policies, as well as in the provision of related services.

39. The Special Rapporteur is also aware of work done by the Human Rights Committee that has relevance for understanding the indivisibility of the right to housing and civil and political rights.[10] In the next report the Special Rapporteur will study in more detail the work of the Human Rights Committee.

3. Sub-Commission on the Promotion and Protection of Human Rights

40. In parallel to the work of the treaty bodies, the issue of the right to housing has received particular attention in the Sub-Commission on the Promotion and Protection of Human Rights, formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Special Rapporteur would like to pay tribute to the important work undertaken by his predecessor, Justice Rajindar Sachar. In 1991, Mr. Sachar was entrusted by Sub-Commission resolution 1991/26 with producing a working paper on the right to adequate housing, with a view to determining how best to further both the recognition and the enforcement of the right. His working paper (E/CN.4/Sub.2/1992/15) focused primarily on legal issues pertaining to the right and on the primary causes of the global housing crisis. In 1993, the Sub-Commission appointed Mr. Sachar as Special Rapporteur on promoting the realization of the right to adequate housing. His first progress report (E/CN.4/Sub.2/1993/15) provided a detailed legal analysis of the legal obligations of States to respect, protect and fulfil housing rights. It also contributed to clarifying the misconceptions about housing rights, and to furthering the understanding of how housing rights can be realized and what actions Governments are obligated to undertake towards this end.

41. His second progress report (E/CN.4/Sub.2/1994/20) addressed issues that continue to hinder the full realization of the right to housing, including the misconception of the lack of State

resources as an impediment to achieving housing rights. Also included in the report was a draft international convention on housing rights that attempted to set out in one document the inherent obligations and entitlements arising from the right to adequate housing.

42. His final report (E/CN.4/Sub.2/1995/12) contained a framework for identifying principles and indicators of the right to housing, and concluded with detailed recommendations, in respect of the full realization of the right, for Member States, the United Nations and other international bodies. Furthermore, it also gave full recognition to the catalytic role played in advancing this human right by civil society groups.

43. Mr. Sachar placed particular emphasis in his final report on the need for human rights groups to adopt a holistic approach to human rights. Moreover, he contributed to identifying a series of elements of the right to housing that "must be viewed as inherently justiciable", including, inter alia, protection against arbitrary, unreasonable, punitive or unlawful forced evictions and/or demolitions; non-discrimination and equality of access to housing; housing affordability and accessibility; and equitable access to credit, subsidies and financing on reasonable terms for disadvantaged groups. Mr. Sachar also observed that, despite major progress regarding the definition of housing rights, implementation and judicial enforcement remained inadequate, a focus of the present Special Rapporteur's efforts.

44. Justice Sachar also identified the need for more work on understanding the precise nature of the link between the right to housing and the right to a safe environment; the right to health; the right to land and food; and the rights of women and of children. The Special Rapporteur concurs with Justice Sachar that these are congruent rights and intends to study the interlinkages in more detail.

45. Coinciding with and following Mr. Sachar's mandate, the Sub-Commission has adopted a series of resolutions affirming this right as well as its relevance for the housing rights of children (resolution 1994/8), of women (resolutions 1997/19 and 1998/15) and of refugees and internally displaced persons (1998/26).

4. Commission on Human Settlements and UNCHS (Habitat)

46. The Special Rapporteur acknowledges the contributions made by UNCHS (Habitat) and the Commission on Human Settlements in further developing the content of the right to housing and strategies for its operationalization. The right to adequate housing also received wide international attention, notably in the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in resolution 43/181 in 1998. Both UNCHS and the Global Strategy stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost."[11]

47. In 1993, the Commission on Human Settlements adopted resolution 14/6 on the human right to adequate housing,[12] which set in motion various processes for operationalizing the protection and promotion of the right to adequate housing. Subsequently, UNCHS prepared a background paper proposing initial steps for the housing rights strategy.[13] Based on this, an expert group meeting on the human right to adequate housing was held at Geneva in

January 1996, jointly organized by UNCHS and the United Nations Centre for Human Rights. The meeting reviewed existing legal instruments and monitoring mechanisms, and recognized the need for developing an international legal instrument for the promotion and protection of housing rights.[14]

48. Of utmost significance was the convening of the second United Nations Conference on Human Settlements (Habitat II) at Istanbul in June 1996. The Habitat Agenda and Plan of Action reconfirmed the legal status of the human right to adequate housing, as well as suggesting in this context ways to prevent homelessness; prevent discrimination in housing; promote security of tenure; prevent illegal evictions and promote access to information, land, services and finance for affordable housing. The Conference also recognized the vital role of non-governmental organizations (NGOs) and community-based organizations (CBOs) in the process of realizing the right to adequate housing.

49. In 1997, in resolution 16/7 on the realization of the human right to adequate housing,[15] the Commission recommended that a joint programme be elaborated between UNCHS and the United Nations Centre for Human Rights. Accordingly, the two organizations co-organized an expert group meeting at Geneva on practical aspects in the realization of the right to adequate housing, which produced draft guidelines for actions by relevant parties at the local, national and international levels, including a proposal for a joint United Nations housing rights programme led by UNCHS and OHCHR. In July 2000 UNCHS launched the Global Campaign for Secure Tenure.

50. While all these steps are important, it is the view of the Special Rapporteur that progress on developing and operationalizing a United Nations systemwide thrust on the right to adequate housing, including the United Nations housing rights programme, has been slow. Particular responsibility for operationalizing housing rights rests with OHCHR and UNCHS. In addition, there is a need to institutionalize housing rights in all relevant divisions of OHCHR and UNCHS including taking on staff that is well versed in this field. The Special Rapporteur sees the evolution of a United Nations housing rights programme as critical to his mandate and will assist in this endeavour.

51. The Special Rapporteur also notes that in recent years, UNCHS has sought to adopt a new strategic vision, in which it rechristened itself as "the City Agency". While global demographic trends towards urbanization may have warranted this focus, the reality remains in the world today that in the countries of the Middle East, several countries of sub-Saharan Africa and Asia remain fundamentally rural with 70 to 80 per cent of the population living in rural areas. The Special Rapporteur is concerned that at the present time there is no United Nations agency dealing with the dire housing and living conditions in parts of the world that are predominantly rural. He hopes during his mandate to draw attention to the state of housing in rural areas and the policy recommendations that emerge.

52. In addition to addressing the above-outlined shortcomings of UNCHS, the forthcoming Special Session of the General Assembly for an Overall Review and Appraisal of the Implementation of the Habitat Agenda ("Istanbul + 5") must build upon the reaffirmation of the right to adequate housing in the Habitat Agenda. This could be done by initiating a process for the adoption of instruments, such as standard rules or guidelines, on various aspects integral to

the realization of the right to housing. This is essential to ensure that States continue to have consultations leading towards the implementation of the right to housing. The Special Rapporteur will engage with the preparatory process for the special session to ensure consideration of these issues.

5. Contribution of civil society

53. The Special Rapporteur recognizes the important role played by civil society in pursuit of greater clarity in the definition of the right to housing and its practical implementation. Efforts by non-governmental and community-based groups include, broadly, the development of methods and tools for monitoring the enjoyment of, and impediments to the right to housing, as well as greater specialization in the field of various economic, social and cultural rights. The increased professionalization of the work of housing rights monitors and human rights organizations in general is essential to meeting the challenges faced in recognizing economic, social and cultural rights in their organic relationship with other human rights. Civil society is responding to the Covenant's call for "progressive realization" with practical notions of what steps Governments can take, including to enable people's initiatives. Therefore, NGO cooperation with the treaty-monitoring bodies as problem-solving laboratories, as exemplified in the work of CESCR, continues to give definition and practical meaning to the right to housing.

54. The Special Rapporteur is aware of civil society activities on the ground, such as training and developing methodologies for monitoring and implementation of the right. In one illustrative example, a technical team of the Habitat International Coalition's Housing and Land Rights Committee (HIC/HLRC) has pooled its experience in housing and land rights in various regions to develop a Housing Rights Barometer. This effort is resulting in the production of a "tool kit" of exercises and methods that relate to the logical and progressive steps toward realizing the right to housing. Application of the Barometer has served a variety of goals, including: (a) monitoring, documentation and recording; (b) quantifying/evaluating impacts; (c) identifying and solving problems; (d) public information and campaigns; (e) social mobilization; (f) media work; (g) legal defence; (h) compensation claims; and (i) cooperation with United Nations treaty bodies.

55. The Special Rapporteur would like to bring to the Commission's attention a number of other valuable resources on economic, social and cultural rights that have resulted from civil society efforts at substantiating housing rights and detailing issues of implementation.[16]

II. PRIORITY ISSUES AND IMPEDIMENTS TO REALIZING THE RIGHT TO ADEQUATE HOUSING

A. Globalization and the right to adequate housing

56. The Sub-Commission resolutions on trade, investment and finance (1998/12, 1999/30 and 2000/7), the study of the Special Rapporteurs on globalization and its impact on the full enjoyment of all human rights (E/CN.4/Sub.2/1999/11 and E/CN.4/Sub.2/2000/13) and the work of CESCR, including its statements on globalization in 1988 and to the third Ministerial Conference of the World Trade Organization in 1999 (E/C.12/1999/9), as well as its days of

general discussion and informal workshops with civil society alliances such as INCHRITI, are evidence of the increasing interest in and invaluable contribution to the understanding of globalization issues.

57. It is well established that the benefits of globalization vary with the level of development of countries and also, to a large degree, the ability of people to take advantage of the opportunities offered by it. For the homeless and the poor, the benefits of globalization have been hardly significant. The findings from the UNCHS Urban Indicator Database reveal that there is a wide gap between income groups, within countries and across countries, in terms of the availability, affordability and habitability of housing and access to utilities, which has resulted in an increase in the number of people in inadequate and insecure housing and living conditions.

58. Nearly all countries at all levels of development have undertaken macroeconomic reform programmes during the past two decades, strongly influenced by market forces and policies of international financial institutions (IFIs). These reforms and domestic policy decisions regarding liberalization, deregulation and privatization have, to varying extents, constrained the exercise of monetary and fiscal policy options for social purposes, including provision of adequate housing. In addition, the United Nations Conference on Trade and Development (UNCTAD) reports that, despite these economic reforms, the expectant economic growth has been too slow, particularly in the least developed countries (LDCs), to make a significant improvement in living or social conditions.[17] The drawbacks of the growing reliance on narrow macroeconomic considerations that drive the availability of resources to social sectors have been a growing concern in a number of United Nations treaty bodies.

59. Where developing countries have successfully attracted a large increase of private capital flows, the rapid growth of cities typically outpaces the provision of adequate housing, resulting in an increased number of the poor living in squatter settlements with no security or civic services. This situation is further aggravated when urban authorities or private operators clear such settlements for commercial use or high-income housing. Moreover, increasing trends towards privatization of housing services and markets also typically result in land speculation, the commodification of housing, the application of user fees for housing resources such as water, sanitation and electricity, and the repeal or amendment of land ceiling and rent control legislation. The result is the increased marginalization of the poor.

60. The intention of the Special Rapporteur is to establish linkages between the processes of globalization and the realization of the right to adequate housing through, inter alia, collection of empirical data and analysis and assessment of the impact of macroeconomic adjustment and debt service on national housing and land policies. There is also a need to ascertain whether the current global social policy prescriptions, under the rubric of "good governance" (World Bank, United Nations Development Programme, UNCHS) and "poverty reduction" (World Bank, International Monetary Fund) are compatible with housing rights principles and State obligations.

61. There is an urgent need to define a research agenda to determine the impact of economic globalization on housing and land rights. The Special Rapporteur will seek the advice of and hopes to collaborate with relevant mechanisms of the United Nations including interested treaty bodies and the Special Rapporteurs on globalization and its impact on human rights, structural

adjustment and debt and the right to food, possibly through convening an expert seminar. The Special Rapporteur would appreciate assistance from Governments and civil society in providing him with information and support in conducting such exercise, including facilitating his country visits.

B. Drinking water as a human right

62. Access to safe drinking water and sanitation is intrinsically linked to full realization of the right to adequate housing. Globally, 1.7 billion persons lack access to clean water and 3.3 billion are without proper sanitation facilities.[18] The Special Rapporteur is aware of the inspiring work of the Sub-Commission on this subject, exemplified in the working paper by Mr. El Hadji Guissé on the right to access of everyone to drinking water supply and sanitation services (E/CN.4/Sub.2/1998/7). In this paper, Mr. Guissé mentions specifically paragraph 8 of CESCR General Comment No. 4, which states that "all beneficiaries of the right to adequate housing should have sustainable access to ... safe drinking water". He also highlights impediments to access, including macroeconomic issues such as the effects of external debt, structural adjustment programmes, the privatization of State enterprises and inadequate planning that results in the unequal distribution, both socio-economic and geographical, of water. To this list the Special Rapporteur would like to add the impediments to the realization of the right to housing that come from the application of "user fees" to water, especially when this is done without regard to the capacity of the poor to spend the meagre funds they have for this life-giving resource. In light of the need to enhance the human rights-based work on access to potable water and sanitation, and consistent with Sub-Commission resolution 2000/8 which stress the "international cooperation" aspects of the work, the Special Rapporteur will ensure that this issue remains a central component of his mandate and intends fully to support and complement, from a housing and land rights perspective, the mandate and important work of Mr. Guissé.

C. Poverty and its impact on housing rights

63. The Special Rapporteur intends, through analysis and case studies, to elaborate further on the nexus between poverty and housing rights, and highlight several issues for the attention of the Commission and the United Nations system. Recognizing that any policy recommendations made during his mandate must consider as participants the people and communities living in insecure and inadequate housing and living conditions, and incorporate their views, the Special Rapporteur intends to examine, inter alia:

The impact of growing income disparity among and within countries;

The impact of economic globalization;

Non-compliance with the international human rights instruments; and

The overemphasis at the national level with wealth per se and a lack of strategies for distributive justice, including land reform and increases in social spending.

64. Faced with this reality, it is urgent to challenge the misconception that the poor, especially those living in slums and other marginal areas, are responsible for social violence and environmental degradation. Indeed, they are the primary victims of such phenomena. A new form of discrimination, not yet addressed in existing human rights instruments, has emerged and people are increasingly marginalized and discriminated against not merely on the grounds of race, class or gender, but because they are poor. The Special Rapporteur will attempt to ensure that this form of discrimination is taken into account in preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

65. The Special Rapporteur would also like to draw attention to the housing situation of LDCs in view of the increasing poverty, inadequate civic services and other environmental and social factors that have affected LDCs during the last decade. The Third United Nations Conference on the Least Developed Countries (LDC-III), to be held in Brussels in May 2001, provides an opportunity for both LDCs and developed countries to reaffirm their obligations under ICESCR and renew their commitments in the new Programme of Action to be adopted. The Special Rapporteur notes with regret that, despite the recognition of housing issues in the 1990 Programme of Action, the current draft Programme of Action for LDC-III (A/CONF.191/IPC/L.4) does not contain any reference to housing as a component of an adequate standard of living, which is essential in building the human capacities of LDCs. The Special Rapporteur urges the Conference to recognize and to institute mechanisms for integrating economic, social and cultural rights in the implementation and follow-up of the Conference outcomes.

D. Gender discrimination in housing and land rights

66. The Special Rapporteur recognizes that there is a gender dimension to every human rights violation and that this is especially true in respect of housing rights violations. Access to and control over land, property and housing are determinative of women's overall living conditions and are necessary to the development of sustainable human settlements in the world today. These entitlements are essential for women's economic and physical security and to the struggle for equality in gender relations.

67. Pursuant to the Commission resolution 2000/13, and in order that women's critical role is recognized and their rights advanced, the Special Rapporteur will encourage the international community to ensure that the strategies and objectives envisioned in numerous legal instruments are realized and that women are accorded substantive rather than illusory rights as they pertain to housing. He will encourage and support the necessary structural transformation in respect of women's empowerment and, to this end, will endeavour to promote awareness of, and accountability to the commitments and responsibilities of Governments and the international community.

68. Of grave concern to the Special Rapporteur is the situation of women whose lives are governed by both constitutional and personal status laws. Of special import to women in countries with such laws is that the equal right to inherit land and property is either precluded by customary law or mediated by a male relative. The Special Rapporteur stresses the right of women to be "free from all forms of discriminatory conduct", as enunciated in resolution 2000/13, and, in accordance with this conviction and the resolution, intends to

investigate this issue throughout his mandate. The Special Rapporteur intends to collaborate on this issue with the relevant units and programmes of UNCHS, relevant treaty bodies and related mandates, especially the Special Rapporteur on violence against women.

E. Children and housing rights

69. Article 6.2 of the Convention on the Rights of the Child states that "States Parties shall ensure to the maximum extent possible the survival and development of the child," to which children's housing rights and living conditions are integrally linked. These human rights are essential to their cognitive, physical, cultural, emotional and social development, particularly as children are disproportionately vulnerable to the negative effects of inadequate and insecure living conditions.

70. The Sub-Commission, in its resolution 1994/8 on children and the right to adequate housing, stressed the adverse impact of poverty, and in particular of inadequate housing and living conditions, on the basic rights of children. This draws the link between poverty and the absence of conditions conducive to development, namely, clean water, sanitation facilities, food, health and education. Throughout his mandate, the Special Rapporteur intends to devote special attention to the impact that violations of the right to adequate housing have on the basic rights of children, especially the girl child and others having special needs and/or subject to discrimination.[19]

71. Moreover, the Special Rapporteur encourages States and United Nations bodies, the World Bank and the International Monetary Fund, to take a proactive approach to realizing children's rights to housing and, in accordance with resolution 1994/8, to develop sustainable poverty reduction solutions with a view to ensuring that the housing and living conditions are improved for the world's half a billion children living in abject poverty. The Special Rapporteur recognizes as well that solutions must necessarily include the participation of children.

72. The Special Rapporteur will attempt to ensure that these issues are given due consideration at the forthcoming Special Session of the General Assembly on Children, September 2001, which will include a review of the progress made since the World Summit for Children in 1990.

F. Forced evictions

73. The issue of forced evictions has been mentioned briefly in various sections of this report. In his next report, the Special Rapporteur will devote attention to the phenomenon of forced evictions which are, as recognized in Commission resolution 1993/77, gross violations of human rights. Specifically, he will conduct an in-depth review of the legal definition of forced eviction as enunciated in international human rights and humanitarian legal instruments and various resolutions of the Commission and Sub-Commission. He will explore documents that have expanded the legal definition, including CESCR General Comments Nos. 4 and 7; the expert seminars on housing rights (1996) and forced evictions (1997); concluding observations under treaty bodies; United Nations guidelines on development-based displacement and on internal displacement; the human rights dimensions of population transfer; and principles on restitution, compensation and rehabilitation of victims. Moreover, it is the intention of the

Special Rapporteur to look at forced evictions that are the result of, inter alia, ethnic cleansing, civil conflict, development projects and the denial of the right to self-determination. He will devote particular attention to the disparate effects of forced eviction on women and children.

G. Indigenous and tribal peoples' housing and land rights

74. The Special Rapporteur takes note that the pursuance of the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity becomes most strikingly clear in the case of indigenous and tribal peoples' right to adequate housing, especially in respect of land claims and rights. This question has been one of the most contentious issues for States in their relationship with indigenous peoples, and has been central to the consideration of the United Nations of the human rights of indigenous and tribal populations since 1987 when it was noted in the conclusions and recommendations of José R Martínez-Cobo.[20] The special relationship of indigenous people to their lands is not only made clear by their conduct and articulation of their way of life, but by the fatal consequences of their historical dispossession of them.

75. The Sub-Commission's Special Rapporteur on the subject, Ms. Erica-Irene A. Daes, has pointed out that, for indigenous peoples, survival rights involve at least four key elements related to their place to live: (a) that a profound relationship exists with their lands, territories and resources; (b) that this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities; (c) that there is a collective dimension to this relationship; and (d) that the intergenerational aspect of such a relationship is crucial to indigenous peoples' identity, survival and cultural viability (see E/CN.4/Sub.2/2000/25). Each of these elements has corresponding dimensions strengthened by the holistic conception and widespread legal recognition of the right to adequate housing.

76. The Special Rapporteur intends to examine these links and the housing dimensions that emerge from the explicit standards found in international instruments such as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the draft United Nations declaration on the rights of indigenous peoples. He will seek to address the United Nations Working Group on Indigenous Populations and develop a working relationship with the Permanent Forum on Indigenous Issues with a view to understanding the many obstacles that remain for the enjoyment of legally recognized indigenous housing and land rights.

H. Domestic applicability and justiciability

77. More than 30 countries currently include housing rights in their constitutional framework, in addition to specific legislation. For the 145 States that have ratified the ICESCR, ensuring the domestic status and application of the constituent rights remains an important priority. Consequently, justiciability of the right to adequate housing in courts at all levels is needed in order for States effectively to respect, protect, promote and fulfil the right to housing. Facing that enduring challenge, it is important to take note of some significant developments, both encouraging and regressive.

78. One of the most significant of these developments has been the recognition accorded to the right to housing in the Constitution of South Africa:

> "Section 26 (1) Everyone has the right to have access to adequate housing. (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

79. This far-reaching provision has already had legislative impact. On 4 October 2000 the Constitutional Court of South Africa delivered a decision in respect of the housing rights of persons forced to live in deplorable conditions while waiting for their turn to be allocated low-cost housing.[21] The judgement significantly advanced the right to adequate housing domestically as well as internationally by resting on section 39 of the Constitution of South Africa,[22] article 11.1 of the ICESCR[23] and the minimum core obligations for States parties to the Covenant set out in General Comment No. 3.[24]

80. The Court held that relevant international law must provide guidance to domestic courts, but more importantly, that as a signatory to the Covenant, South Africa was bound to uphold the principles therein. The Court also held that the State was obligated to abide by its commitments in proactive and practical ways, despite financial constraints, and that the programmes and policies necessary to meet these commitments are matters appropriate for judicial review.

81. In stark contrast, two recent judgements from India can be considered significant setbacks. In the same month as the case in South Africa, the Supreme Court of India in Narmada Bachao Andolan v. Union of India and Others[25] revealed a regressive attitude towards housing rights and disregard for both fundamental human rights and India's obligations under the ICESCR.[26] At issue was the continued construction of the Narmada Dam and its significant impact on both the environment and the hundreds of thousands of tribal people in the Narmada Valley, who have been displaced with inadequate resettlement and rehabilitation plans.[27]

82. The Special Rapporteur is concerned that, despite detailed knowledge of the inability of the authorities to determine the total number of people to be displaced and to find adequate land for their resettlement, and the incomplete resettlement for those already displaced, the Supreme Court ruled that "... displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights..."[28] and held that the construction of the dam would continue. The judgement contradicts previous Supreme Court rulings that have upheld the right to shelter as related to the right to life[29] as well as the Narmada Water Disputes Tribunal decisions. It is also dismissive of the legitimate struggle of the people of the Narmada Valley led by the Narmada Bachao Andolan (Save the Narmada Campaign), petitioner in the case.

83. In another case, the Bombay High Court heard a petition filed in 1995 by the Bombay Environmental Action Group (BEAG) to "remove forthwith" informal settlement dwellers (as "encroachers") adjacent to the Sanjay Gandhi National Park so as to ensure the protection of "the

environment and all its aspects". Subsequent to the petition, the Bombay High Court of 7 May 1997 directed the relevant authorities to evict persons from their homes, pursuant to various wildlife protection and conservation laws, effectively depriving them of their livelihood.

84. The Indian Peoples Human Rights Tribunal on Sanjay Gandhi National Park, determined that the BEAG petition was clear evidence that its vision of a "clean environment" excludes vast sections of the population who were unpropertied and living in abject poverty. As well, the Court's summary eviction order will eventually affect half a million slum-dwellers. Particularly disturbing was the fact that the Court not only ordered this mass eviction, but it explicitly ordered the demolition of homes and the destruction of all belongings and construction materials which, in the first wave of evictions, were gathered and burnt by the demolition squad.

85. The recognition of the indivisibility and interdependence of human rights is essential to their full realization. It is therefore a matter of concern that judgements across the world are unfortunately providing a legal basis for a growing conflict between proponents of the right to a healthy environment and the right to housing and livelihood. These judgements not only create disharmony among complementary human rights, but in doing so violate the human rights of the very people the courts are charged with protecting.

86. In both cases cited above, the Special Rapporteur has received communications from affected parties. He will continue to monitor these and other such cases and take action to expose the inconsistencies of such judicial decisions with the international provisions concerning housing rights and forced evictions. Under the theme of "Justiciability of the right to housing" he will dedicate a section of his next report to both the progressive and regressive developments in respect of the human right to housing in domestic courts, and would appreciate receiving information on developments such as those highlighted above.

III. ACTIONS TO PROMOTE THE REALIZATION OF THE RIGHTS TO ADEQUATE HOUSING

A. Approach/methodology proposed by the Special Rapporteur

87. The Special Rapporteur intends to take a constructive approach that will provide solutions aimed at the realization of the human right to adequate housing. While the violations approach yields critical insights into the many dimensions of housing rights (such as through a study of the causes and consequences of forced evictions), it is the Special Rapporteur's intention to focus primarily on identifying where and in what form innovation and strategic cooperation have led to the realization of the rights. The Special Rapporteur intends to draw from them policy suggestions with demonstrated practicality. At the same time the Special Rapporteur will make a critical analysis of the current global fashion of "best practices" from a housing rights perspective.

88. He will attempt to investigate key dimensions of the right to housing keeping in mind the indivisibility of all human rights, especially the interface between housing as an economic, social and cultural right and critical civil and political rights such as the right to information and the right to the security of the home, without which the right to adequate housing loses its meaning.

89. In order to fulfil this ambitious mandate, the Special Rapporteur will seek the cooperation and partnership of a variety of individuals, organizations and State institutions. In addition, he expects to engage in active dialogue with United Nations and other intergovernmental agencies, IFIs, human rights treaty bodies and civil society organizations at all possible levels.

B. Cooperation with Governments

90. In the extensive work undertaken in the last decade on the right to housing, numerous insights have emerged on the precise nature of State responsibilities at the international and national levels. The forthcoming reports of the Special Rapporteur will detail the nature of these obligations, which will focus on, inter alia:

(a) Engaging in a dialogue towards developing further the "core content" of the right to adequate housing, and the State obligations to "recognize, respect, protect and fulfil" the right;

(b) Defining and studying the feasibility of indicators and benchmarks to understand better the meaning of "adequacy" in the context of the right to housing as a component of the right to an adequate standard of living;

(c) Applying the Limburg Principles and the Maastricht Guidelines;

(d) Exploring prospects for domestic justiciability of the right to adequate housing;

(e) Analysing globalization pressures, structural adjustments and debt servicing and their effect on States' ability to implement the right to adequate housing; and

(f) Developing further the meaning of "international cooperation" in the context of covenanted human rights obligations relating to the right to housing.

C. International cooperation

91. Of particular importance are the obligations for States emerging out of the international legal provisions of international cooperation. These obligations are especially critical given the current global reality of growing income disparities, the related growing civil society unrest, and academic and media attention which have highlighted the policies and guiding principles of bilateral and multilateral institutions that drive economic globalization. The groups, mentioned above, that question the ideological and procedural basis of economic globalization recognize the importance of the "regulatory" role of the State. The link with State obligations under the international human rights instruments is obvious.

92. With reference to economic, social and cultural rights, particular attention needs to be given to articles 2.1, 11, 15, 22 and 23 of ICESCR, which build upon the foundation for international cooperation in Articles 55 and 56 of the Charter of the United Nations, and the obligation for States parties to recognize the essential role of international cooperation and to reaffirm their commitment to take joint and separate action.

93. What flows from this is that States' international policies (or policies they contribute to formulating at multilateral forums and institutions) must respect the full realization of people's economic, social and cultural rights. These insights and provisions obviously have implications for trade, investment, finance, debt and structural adjustment policies.

94. In the context of the right to adequate housing, it is important to keep in mind the obligations enshrined in article 11.1 of ICESCR urging all States parties to "take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent". CESCR further clarified this obligation in General Comment No. 4 for both States and IFIs who must:

> "seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected people" (para. 19).

95. The Special Rapporteur would like to stress that in this era of increasing interdependence, when it is clear that States acting alone cannot meet their human rights obligations, that it is important to go beyond the discussions of official development assistance or other forms of financial assistance. The "solidarity" and "fraternity" dimensions of international cooperation need urgent attention. In order to ensure that the obligations flowing from the "international cooperation" provisions of international human rights instruments are met, the Special Rapporteur will examine two areas of work:

(a) The need to review existing and potential international economic and other obligations; and

(b) The need to assist, through "joint and separate action", in the improvement of housing and living conditions.

96. The Special Rapporteur finds the field of "international cooperation" a valuable area of inquiry and action and an under-utilized aspect of international human rights law and relations. He is encouraged by the attention that this issue is gaining in various human rights forums,[30] and, pursuant to resolution 2000/9, would like to contribute to the development of instruments that would be useful to Governments, relevant United Nations bodies, specialized agencies, international organizations in the field of housing rights, non-governmental organizations and international financial institutions to counter the adverse effects of economic globalization. The Special Rapporteur would also like to underscore the human rights aspects of international cooperation in the context of the High-level Event on Financing for Development to be held in 2002.

D. Cooperation with international and regional financial and economic institutions

97. An increased focus on poverty and country-owned processes in the policies of the international financial institutions such as the World Bank and IMF is reflected in new instruments such as the Poverty Reduction and Growth Facility (PRGF) of IMF (which replaced the controversial Enhanced Structural Adjustment Facility (ESAF) in November 1999) and the

Poverty Reduction Strategy Paper (PRSP) and Comprehensive Development Framework (CDF) processes of the World Bank. The Special Rapporteur is of the view, however, that given the reluctance of these institutions to jettison the narrow macroeconomic perspective that continues to drive these new initiatives, it is unlikely that these policies will contribute to the realization of economic, social and cultural rights in general and the right to adequate housing in particular. The Special Rapporteur will pay particular attention to the changes in policy conditionality as a result of the transformation of ESAF into PRGF and the national responses, and will also review the current debt-relief mechanisms, particularly the Heavily Indebted Poor Country (HIPC) initiative, and their likely effect on the poverty reduction prospects of HIPCs, especially the right to adequate housing. The Special Rapporteur looks forward to working closely with other mandates established by the Commission and the Sub-Commission.

E. Cooperation with the United Nations bodies and human rights mechanisms

1. Developing linkages with treaty bodies and other mandates

98. The Special Rapporteur will make every effort to encourage strengthening linkages between his mandate and the treaty bodies, as well as with other mandates established by the Commission and Sub-Commission, including those on food, water, internally displaced persons, migrants, indigenous people, street children, human rights defenders, women and violence, extreme poverty, and the effects of structural adjustment policies and foreign debt. The Special Rapporteur has, during the relatively short period since his appointment, had opportunities for informal exchanges of views with several other special rapporteurs and independent experts, and is convinced that regular consultations among all mandate holders will enrich the normative content of all rights and enhance the impact of thematic mandates. The Special Rapporteur is also grateful to have been given an opportunity to hold a dialogue with CESCR at its twenty-fourth session on 29 November 2000, and appreciated the useful advice and guidance from the Committee members.

2. Inter-agency consultation

99. The Special Rapporteur is expected to play a catalytic role in promoting interagency cooperation among United Nations bodies and other international organizations. Towards this end, an inter-agency consultation meeting was organized by OHCHR in cooperation with UNCHS in Geneva on 28 November 2000, for the initial stocktaking of activities undertaken by various agencies relevant to his mandate. The initial assessment revealed that the various aspects of the right to adequate housing were seriously dealt with by several agencies, including UNHCR and UNICEF, and that others were in the process of re-evaluating the housing dimensions of their mandates, keeping in mind the relevance of the human rights approach.

100. This meeting was also invaluable to the Special Rapporteur in mapping out possible modalities of interaction with United Nations bodies in carrying out his mandate, and as such he requests OHCHR to organize such an inter-agency consultation on a regular basis.

3. Integrating the right to adequate housing in the operational activities of the United Nations

101. The Special Rapporteur recognizes the important role the United Nations system has, through the effective use of the United Nations Development Assistance Framework (UNDAF) and Common Country Assessment (CCA) processes, in responding to the needs of its member States and in promoting greater realization of all human rights at the field level. In this context, he is aware that OHCHR has been actively promoting rights-based approaches through the CCA/UNDAF. While the current CCA indicator covers housing statistics in terms of sufficient living space, disaggregation of indicators beyond gender and geography, such as discrimination and exclusion with regard to race, religion and ethnicity, are necessary to achieve more meaningful analysis of the enjoyment of the right to adequate housing. Towards this end, the Special Rapporteur looks forward to working with OHCHR, UNCHS and the United Nations Development Group in further refining CCA/UNDAF as a tool to promote, in the context of the right to adequate housing: (a) free, active and meaningful participation; (b) the empowerment of women; (c) accountability by all partners; and (d) non-discrimination and attention to the rights of vulnerable people and communities.

102. In this context, the Special Rapporteur notes with interest the recent launching of the Global Campaign for Secure Tenure by UNCHS and attaches importance to strengthening cooperation between the two offices and with other partners, including civil society, for operationalizing the campaign for the further realization of the right. The Special Rapporteur will seek to ensure that this campaign evolves conceptually from the current narrow focus to embrace the wider requirements of the right to adequate housing. This reassessment needs to include also a wider participation of civil society organizations that are directly working from a housing rights-based perspective across the world.

103. The Special Rapporteur welcomed the opportunity to attend a joint meeting on technical cooperation held on 28 November 2000 between OHCHR and UNCHS, at which it was revealed that the vast majority of field activities and projects of both agencies were not conceptualized and made operational from a housing as a human rights perspective. As such, the Special Rapporteur will review the technical cooperation activities of all relevant agencies, particularly OHCHR and UNCHS.

4. Cooperation with regional human rights bodies and national human rights institutions

104. The Special Rapporteur intends to forge a working relationship with regional human rights mechanisms and national human rights institutions, with a view to understanding the extent of the work on the right to housing by these bodies and, where necessary, encouraging more work on this right. The need, for example, for national human rights institutions to focus more on economic, social and cultural rights is evident. An attempt will also be made to bring to the attention of these bodies violations of the right to housing that come to the notice of the Special Rapporteur.

F. Cooperation with civil society

105. The Special Rapporteur acknowledges, and is inspired by, the genius and innovation that characterizes civil society in respect of housing rights and hopes to act as a conduit for this wisdom by bringing the voices of the poor to the ear of the international community, in particular through popular expressions such as poetry, case studies and stories.

106. Over the past decade, expertise has developed within civil society on a range of areas relevant to the mandate of the Special Rapporteur. These include conceptual work and standard-setting, human rights education and learning materials, strategies for alternative planning from slum settlements, community finance, formation of campaigns, documentation of violations and so forth.

107. The Special Rapporteur will develop methodologies for collaboration with the various levels of ongoing efforts. Some of these may include:

(a) Development of questionnaires on monitoring the realization of housing rights and assessing violations;

(b) Developing an urgent action response mechanism;

(c) Encouraging increased use of the United Nations system including alternative reporting procedures; and

(d) Encouraging the development of human rights education materials, including training manuals and so forth.

IV. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

108. Given the information that is already available to the Special Rapporteur, it is clear that housing and living conditions across the world are deteriorating. Therefore, the creation of the Special Rapporteur's mandate is a welcome step that could lead to a better understanding of the structural reasons for this state of affairs and act as a catalyst for institutionalizing housing rights. The Special Rapporteur is of the view that a forthright approach in the mandate that draws upon the considerable wisdom that rests with Governments, the United Nations and other international agencies, civil society and the professional community can result in concrete policy recommendations aimed at alleviating the enormous shortfall in the global realization of the human right to adequate housing.

109. Accordingly, the Special Rapporteur intends to promote the linkages between the right to adequate housing as a component of the right to an adequate standard of living, and the global review processes of United Nations conferences including the five-year review of the Habitat Agenda (Istanbul +5) in June 2001, the 10-year review of the World Summit for Children in September 2001, the Third United Nations Conference on Least Developed Countries (LDC-III) in May 2001 and the High-level Event on Financing for Development in 2002. This report has already highlighted issues to be raised at these conferences.

110. The following recommendations, respectfully made to the Commission, will allow the Special Rapporteur to fulfil his mandate effectively:

(a) Given the consistent interest that the United Nations General Assembly has shown on the subject, the Special Rapporteur requests the Commission to make it possible to report annually both to the Commission and to the General Assembly;

(b) The Special Rapporteur places importance on the need to undertake further studies, based on the development of a research agenda, on the effects of globalization processes, including liberalization, deregulation and privatization, with a particular focus on housing. The Commission could request the Special Rapporteur to convene an expert seminar, in collaboration with OHCHR, UNCHS and the United Nations Research Institute for Social Development, to address these issues and initiate a process that will enable the Special Rapporteur to make policy recommendations;

(c) Given that the critical issue of women and housing rights will be a consistent theme during the course of the mandate, the Special Rapporteur requests the Commission also to make it possible for him to report annually to the Commission on the Status of Women;

(d) The Commission may wish to entrust the Special Rapporteur with the tasks of seeking, receiving and responding to information on all aspects of the realization of the right to adequate housing, in particular urgent calls/action in cases of serious violations of the right to adequate housing, including forced evictions or discriminatory policies and measures that impact upon the realization of the right to adequate housing;

(e) Given the wide scope of his mandate and the scale of the housing crisis, including the differential impacts on vulnerable groups, in the world today, the Special Rapporteur requests that he be permitted to submit periodically, in addition to the annual report, thematic reports that highlight different dimensions of the problems and solutions that are called for in order to develop an accurate assessment and a result-oriented thrust to the mandate. These thematic reports could focus on developing the link between the right to adequate housing as a component of the right to an adequate standard of living and issues such as forced evictions and resettlement, international cooperation, indicators and benchmarks.

Notes

[1] The inspiration for this definition comes from the work of the Indian National Campaign for Housing Rights, the Habitat International Coalition and the Committee on Economic, Social and Cultural Rights.

[2] See E/1990/23-E/C.12/1990/3, chap. VI, sect. B.

[3] E/1992/23-E/C.12/1991/4, annex III. All General Comments are also available on the OHCHR Web site.

[4] E/1998/22-E/C.12/1997/10, annex IV.

[5] E/1993/22-E/C.12/1994/20, annex IV.

[6] E/1996/22-E/C.12/1995/18, annex IV.

[7] E/C.12/2000/4.

[8] A/50/18, annex VII.

[9] A/51/18, annex IV.

[10] See, for example, the Committee's concluding observations on the fourth periodic report of Canada adopted at its sixty-fifth session in 1999 (CCPR/C/79/Add.105), in which the Committee looked at the severe implications of homelessness on the right to life.

[11] A/43/8/Add.1/para. 5

[12] A/48/8, annex I, sect. A.

[13] UNCHS (Habitat), "Towards a Housing Rights Strategy: Practical Contributions by UNCHS (Habitat) on Promoting, Ensuring and Protecting the Full Realization of the Human Right to Adequate Housing" (HS/C/15/INF.7).

[14] See HS/C/16/2/Add.2, annex II.

[15] A/52/8, annex I, sect. A.

[16] See in particular Stephen Hansen, Thesaurus of Economic, Social and Cultural Rights: Terminology and Potential Violations (Washington D.C.: American Association for the Advancement of Science, 2000); Allan McChesney, Promoting and Defending Economic, Social and Cultural Rights: A Handbook (Washington D.C.: American Association for the Advancement of Science, 2000); Circle of Rights: Economic, Social and Cultural Rights Activism, A Training Resource (International Human Rights Internship Program and Asian Forum for Human Rights Development, 2000); and Monitoring Economic, Social and Cultural Rights: The Philippine Experience Phase One (Manila: Philippine Human Rights Information Center, 1997).

[17] See UNCTAD, The Least Developed Countries 2000 Report, UNCTAD/LDC/2000.

[18] Santosh Mehrotra, Jan Vandermoortele and Enrike Delamonica, Basic Services for All? Public Spending and the Social Dimensions of Poverty (Florence: UNICEF Innocenti Research Centre, 2000).

[19] The Special Rapporteur takes note of several important reports by UNICEF such as Poverty Reduction Begins with Children and the State of the World's Children 2001, which have embraced a human rights approach.

[20] Study of the Problem of Discrimination against Indigenous Populations, Volume V - Conclusions, Proposals and Recommendations (United Nations publication, Sales No. E.86.XIV.3), paras. 196-197.

[21] See The Government of the Republic of South Africa et. al. v. Irene Grootboom et. al., Case CCT 11/00, heard on 11 May 2000 and decided on 4 October 2000.

[22] Section 39 states that courts must: "Promote the values that underlie an open and democratic society based on human dignity, equality and freedom [and] must consider international law".

[23] South Africa became a signatory on 3 October 1994, but has not yet ratified the Covenant.

[24] Justice Yacoob of the Constitutional Court of South Africa described the meaning of minimum core obligation: "It is the floor beneath which the conduct of the State must not drop if there is to be compliance with the obligation. Each right is a 'minimum essential level' that must be satisfied by the States parties".

[25] Narmada Bachao Andolan v. Union of India and Others, 18 October 2000 [hereinafter Narmada].

[26] The Supreme Court of India has held on numerous occasions that international law can be read into the domestic law of the country. Gramophone Co. of India v. B.B. Pandey, 1984 (2) SCC 534; PUCL v. Union of India, 1997 (3) SCC 433; and CERC v. Union of India, 1995 (3) SCC 42 are cases that support this assertion. In addition, article 51 of the Constitution of India states: "The State shall endeavour to ... (c) foster respect for international law and treaty obligations in the dealings of organized people with one another ..." Accordingly, the courts and the legislature are encouraged to maintain harmony with international law in their decision-making.

[27] According to official figures, the Sardar Sarovar Project will displace 40,827 families, mostly from tribal communities. The unofficial total is estimated to be as high as half a million.

[28] Narmada, at para. 61.

[29] See Francis Coralie v. The Union Territory of Delhi, (1981) 1 SCC 608; R. Francis Mullin v. Administrator of Union Territory of Delhi (1982) 2 SCR 516; Olga Tellis v. Bombay Municipal Corp., (1985) 3 SCC 545; Shantistar Builders v. Narayan Khimalal Totame and Others (1990) 1 SCC 520; Keshavananda Bharti v. State of Kerala [as reported in Unnikrishnan v. State of Andhra Pradesh, p. 2229]; and Chamelli Singh and Other v. State of Uttar Pradesh (JT 1995 (9) SC 380. Excerpts from this judgement will be available on the OHCHR Web site on housing.

[30] See in particular the Record of the Workshops on International Trade, Investment and Finance and Economic, Social and Cultural Rights: The Role of the Committee on Economic, Social and Cultural Rights, 6 May and 19 August 2000 (CESCR/WK), available on the OHCHR Web site.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted in accordance with Commission on Human Rights resolution 2000/9

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Executive summary

This is the third annual report of the Special Rapporteur on the right to education, submitted to the Commission on Human Rights at a key stage when the mandate is due for renewal. The Special Rapporteur is suggesting to the Commission that it consider all available options, from not renewing her mandate to its altering or strengthening, guided by the mismatch between the obstacles she has faced in carrying out her mandate and the full potency of the right to education which could, and should, be cultivated.

As outlined in Section I, the right to education constitutes a veritable bridge between civil and political, and economic, social and cultural rights. The current orientation of global development strategies towards poverty eradication makes the right to education a powerful tool for mainstreaming human rights and enhancing gender equality. Further explication of the human rights dimensions of education will facilitate the work of many international actors dealing with education, and this necessitates a great deal of human rights input. Like Janus, the Roman guardian of portals, education has two faces: the one in front promises to unlock other rights where the right to education is guaranteed, while the one at the back exhibits compounded denials of rights stemming from the denial of the right to education.

The Commission on Human Rights has urged the Special Rapporteur to focus on obstacles and difficulties impeding the realization of the right to education, and Section II describes her work at both domestic and international levels. In her correspondence with individual Governments, the Special Rapporteur has addressed specific problems, events, or phenomena which have been communicated to the United Nations from all over the world. The merging of the right to education and the rights of the child has also required addressing thematic issues. Collaboration with the Committee on the Rights of the Child and the ILO/IPEC (International Programme for the Elimination of Child Labour of the International Labour Organization) has made discrepancies between the school leaving age and the minimum age for employment a pertinent topic so as to advance the long-established principle whereby children should be at school until they reach the minimum age for employment. The launching of the United Nations 10-Year Girls' Education Initiative exemplifies the range and complexity of difficulties which ought to be overcome, not least the focus on HIV/AIDS education.

The need to promote human rights as a corrective to global development strategies has guided the Special Rapporteur in her work. Section II summarizes the Special Rapporteur's continued dialogue with the World Bank, through extensive correspondence as well as her visits to the Bank. The grounding of human rights in the rule of law is the necessary underpinning for all human rights protection. While many pronouncements have emerged from the World Bank concerning human rights, none of these is binding for the Bank's lending operations. This problem is immense and so the Special Rapporteur has chosen as the first step the charging of fees in primary education. She is recommending to the World Bank an in-house review of all its education lending in order to identify all instances where fees are being charged in primary education, followed by guidance to all staff and information to the affected populations on immediate measures for their abolition. Alongside the inevitable undermining of international human rights law which the continued charging of fees in primary education entails, precluding access to school to those who are too poor to pay school fees counters the World Bank's commitment to combating poverty because education is a passageway out of poverty.

The need to integrate human rights in all international strategies is illustrated in Section III. The Commission's emphasis on the mainstreaming of gender has been particularly pertinent in education in emergencies. An increased terminological shift to gender has not always been accompanied by the needed conceptual shift, which requires regard to both sexes as well as the relations between them. The growing global attention to the causation of warfare and to peace-building requires prioritizing education. A great deal of human rights input is necessary to redress the damage caused by abusing education to instigate institutionalized discrimination or to promote violence, particularly in humanitarian and peace-building programmes. International funding for education in emergencies has increased, which somewhat ameliorates the gloomy picture of constantly diminishing aid flows. The interplay between global and domestic environments has been a dominant feature of the economic, fiscal and commercial policies which embody a risk of marginalizing the right to education. The Special Rapporteur has devoted considerable attention to debt relief initiatives, striving to articulate and advocate the need to fully integrate the right to education. Following her progress report, she has also continued to examine developments in international trade in education services, including new phenomena such as *webucation*. Arguing that education is a public good and that schooling is a public service has become as difficult as it is necessary.

The growth of rights-based strategies in international development cooperation constitutes a welcome novelty, and developments in the United Kingdom, Norway and Sweden are highlighted in Section IV. The Special Rapporteur has made it an important part of her work to facilitate the use of human rights standards in development cooperation, including those aiming at gender equality.

Section V presents a few highlights from results of the Special Rapporteur's work on analysing and summarizing the international and domestic legal frameworks of the right to education. These will be available through the emerging public access human rights resource and training centre on the right to education, which will include an online service (www.right-to-education.org) as of 15 March 2001. She has continued applying her 4-A scheme, whereby governmental human rights obligations are to make education available, accessible, acceptable and adaptable, and is developing the first jurisprudence database on the right to education and human rights in education. These are essential prerequisites for furthering human rights education, particularly necessary during the United Nations Decade for Human Rights Education.

Conclusions and recommendations review the path travelled thus far and highlight the most promising avenues for consolidating the right to education in the work of the Commission on Human Rights.

Introduction

1. By its resolution 1998/33 of 17 April 1998, the Commission appointed the Special Rapporteur on the right to education for an initial period of three years within its general effort to impart higher visibility to economic, social and cultural rights. This report depicts the road travelled thus far, highlights developments relevant for the right to education, briefly describes the Special Rapporteur's work, and suggests for the Commission's consideration important issues pertinent to her mandate.

2. The Special Rapporteur has done her best to comply with the requirements of her mandate despite minuscule support by the Office of the High Commissioner for Human Rights, consisting of about 10 per cent of a full-time equivalent of one junior human rights officer, and an annual budget which effectively allows only one mission every second year. At the seventh annual meeting of Special Rapporteurs/Representatives, Independent Experts and Chairpersons of Working Groups of the special procedures of the Commission on Human Rights held from 5 to 9 June 2000, the Special Rapporteur was elected to chair the group until the next annual meeting in June 2001. This has considerably increased her workload but has also provided an opportunity for closer consultation and cooperation amongst Special Rapporteurs and for initiating an interactive dialogue with the Commission.

3. To fulfil even the minimum requirements of her mandate, the Special Rapporteur has had to rely on external support. It has thankfully been forthcoming, and there is a wide range of institutions and individuals to whom the Special Rapporteur owes a debt of gratitude - her colleagues within the thematic and country procedures of the Commission on Human Rights, members and secretariats of the human rights treaty bodies, academic institutes, non-governmental organizations and, especially, her former and current students. The need to mobilize a great deal of unpaid work by her former students has been, regretfully, the only way to do the work needed to firmly ground her mandate upon the practice of States in interpreting and putting into practice the right to education. She is particularly thankful for the external funding which has enabled her to carry out her mandate.[1]

4. The Special Rapporteur wishes to acknowledge the moral support of ActionAid, whose members from all over the world have launched a veritable writing campaign in support of her work. She has been surprised and delighted to receive hundreds of cards from individuals who feel strongly about voicing their personal support for translating the right to education into reality for all children, especially girls.

I. NURTURING THE RIGHT TO EDUCATION TO ITS FULL POTENCY

5. The firm grounding of the right to education in international and domestic human rights law provides for the clarity and specificity of human rights standards needed for addressing its key dimensions at the global level. The right to education is recognized, promoted and protected at all levels - from local to global - and it fully reflects the interplay between the dual processes of globalization and localization which are now taking place. In most federal countries, education pertains to the remit of regional or local authorities and the current trend towards decentralization furthers the localization of education. The parallel process of globalization substantively affects only the uppermost levels of the education pyramid. Primary education

remains local and this is unlikely to change. However, the financial impact of globalization affects the whole education pyramid, while its ideological underpinning treats education as an industry [2] which provides a service that is traded just like any other. The role of the State in education, affirmed in international and domestic human rights law, provides a powerful antidote against the risk of depleting education of remaining a public good and schooling from remaining a public service. The full mobilization of the existing human rights standards for education can neutralize negative dimensions of globalization at all levels, thus enabling the human rights community to provide a timely contribution to developments which were, until recently, deemed to lie beyond the reach of human rights safeguards.

A. Interface between civil/political and economic/social/cultural rights

6. The right to education straddles the division of human rights into civil and political, on the one hand, and economic, social and cultural, on the other hand. It embodies them all. This feature affirms the conceptual universality of human rights, which is evidenced in the increasing focus on the human rights of women and the rights of the child. While it is acknowledged that gender discrimination cannot be eliminated as long as it remains artificially divided between different categories of rights, further steps are necessary to design and put into practice a comprehensive strategy for its elimination with regard to the right to education, human rights in education, as well as enhancing the enjoyment of all rights and freedoms through education.

7. Improved access of girls to school has been prioritized in the global education strategies by setting 2005 as the target year for the elimination of gender disparities, a full decade before access to school for all children is to be attained. The record thus far has been mixed - China has eliminated gender disparity in access to school, girls outnumber boys in countries such as Botswana, Lesotho, Mongolia or the Philippines, but in the Arab States gender disparity has actually increased in 1995-2000 with proportionally fewer girls having had access to schooling.[3] The launching of the United Nations 10-Year Girls' Education Initiative provides a clear focus for further enhancing successes and facilitating the elimination of the existing obstacles. Human rights input figures prominently in this Initiative because the record thus far has demonstrated that all individual rights affect education. Women's land ownership and employment opportunities influence the motivation of parents and the girls themselves. Successful prolongation of girls' schooling delays marriage and childbearing, thus decreasing fertility and the numbers of children to be educated in the future. Women's increased political representation often tends to have beneficial effects on governmental social policies and on countering the militarization of societies.

8. The commitment to increase access to education for girls has focused on the identification and elimination of obstacles, which has led to the realization that discrimination is often multiple, with race, family income, ethnicity, religion, and nationality[4] compounding and complicating the elimination of gender discrimination. Mere access to school does not suffice and *all* human rights in education need to be integrated so as to make schooling human rights friendly. Studies of school textbooks have often revealed that women are portrayed as staying at home while men are out in the public making history. A survey of the presence of women in textbooks used in primary education in Peru revealed that women were mentioned 10 times less often than men.[5] A study of textbooks in the United Republic of Tanzania in such apparently

neutral subjects as learning English and Kiswahili showed girls doing domestic chores as a favourite topic.[6] Alongside the orientation and contents of education, methods of teaching and the protection of girls' safety and dignity have become important topics of study and policy-making. Moreover, the interrelatedness of human rights has further broadened inquiry into girls' prospects after schooling. The current priority of poverty eradication has provided an additional incentive: schooling as the sole asset cannot lead women (or men for that matter) out of poverty.

B. Prerequisite for the eradication of poverty

9. The two focal points of international financial support for education at the beginning of the new millennium are human rights and poverty eradication.[7] Neither of the two is new but the linkage between them is novel. Clearly and powerfully articulated human rights - both in education and in poverty eradication - are necessary in order to prevent the current focus on poverty from lowering the goals of international development cooperation. Cynics could discern lowered ambitions in the shift from development to poverty eradication, from education to basic education, and from education as a public good to education as a tool for poverty eradication. The definition of education in international human rights law is therefore a necessary safeguard - it spans the right to education, human rights in education, and human rights education.

10. Investment in the education of all children was historically assigned to the State because it yields delayed economic returns and, moreover, only in combination with other assets. The human rights approach can greatly facilitate prioritizing education of all children because it alters political choices that, on their own, work in other directions. Education rarely attains the priority in budgetary allocation which international human rights law requires, and where it does, allocations are slanted towards higher education at the expense of primary education. The Republic of Korea is a favourite example of the sound economic rationale for investing in primary education, with two thirds of public funding allocated to primary education in 1960-1975, followed by one third of the total to secondary education in 1975-1990.[8] This example is important because disappointments with education which has been ill-suited to income generation have been many. They have been evidenced recently in Eastern Europe where the generally high levels of education have not proved their value as an economic investment. It is indicative that only one in seven young people in Eastern Europe has recently rated education as essential for getting ahead in life.[9] Disillusionment with education which is producing armies of unemployed graduates is well known throughout the world and demonstrates the necessity of affirming the interrelationship of human rights in the very design of education strategies.

C. Passkey for unlocking other human rights

11. Many individual rights are beyond the reach of those who have been deprived of education, especially rights associated with employment and social security. Education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated.

12. Without education, people are impeded from access to employment. Lower educational accomplishment routinely prejudices their career advancement. Lower salaries negatively affect their old-age security. Denial of the right to education triggers exclusion from the labour market and marginalization into some form of informal sector, accompanied by exclusion from social security schemes because of the prior exclusion from the labour market. Redressing the existing imbalance in life chances without the full recognition of the right to education is thus impossible. Moreover, illiterate people in quite a few countries are precluded from political representation. There is thus a large number of human rights problems which cannot be solved unless the right to education is addressed as the key to unlocking other human rights.

13. From the perspective of the rights of the child, education constitutes the key for the child's perception of human rights. Specific courses in human rights education are located at the top of the education pyramid and are unlikely to be effective if the child was earlier taught about her or his own unworthiness because the child happens to be female or disabled. One important educational experience of any child between the ages of three and five is being taught to perceive a viewpoint different from the child's own, because small children perceive only one side of everything: their own. Many political and armed conflicts are founded upon each side perceiving only one side of everything: its own. The ability of education to socialize children into understanding and accepting views different from their own is an important lesson for all human rights education.

14. The language of education constitutes a frequent battleground within education laws and policies. One important reason is that intergenerational transmission through institutionalized schooling is crucial for the survival of any culture. However, education as a cultural right has been overwhelmed by the political dimensions of the choice of official languages and languages of instruction, their financial implications, and the varied experiences in promoting the best interests of learners. The Special Rapporteur is carefully monitoring experiences with bilingual and multilingual education and will devote increased attention to this issue in the future.

II. ADDRESSING OBSTACLES IMPEDING THE REALIZATION OF THE RIGHT TO EDUCATION

15. The Commission on Human Rights has asked the Special Rapporteur to focus on overcoming obstacles and difficulties in the realization of the right to education worldwide. This is a necessary and important part of human rights work because the corollary of the recognition of any right is that the right can and will be violated. The Special Rapporteur has carried out an in-depth study of the practice of States in the interpretation and application of the right to education (summarized in Section V), which has revealed a great deal of conformity with the requirements of international human rights law. This has provided an excellent basis for strengthening all facets of the right to education and for the examination of obstacles so that they can be effectively addressed and eliminated.

16. As mentioned in her progress report (E/CN.4/2000/6, para. 10), the Special Rapporteur has replicated the procedure set up for other mandates. She has not sent out any general request for information but approached specific Governments for clarification when particular difficulties concerning the right to education were brought to her attention. The Special Rapporteur's close cooperation with her colleagues within the thematic and country-specific

procedures, the human rights treaty bodies, and international organizations which are addressing specific denials and violations of the right to education - especially UNESCO and ILO - have facilitated the development of common approaches and avoidance of duplication. On 11 September 2000 the Special Rapporteur participated in the seventh session of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART). CEART monitors the implementation of the 1966 ILO/UNESCO Recommendation on the Status of Teachers (adopted by the Special Intergovernmental Conference on the Status of Teachers convened by UNESCO), and has recently expanded its remit to the status of university teachers on the basis of the 1997 UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel.[10] It meets once every three years to deal with, *inter alia*, complaints from teachers' unions alleging non-observance of the spirit and wording of the 1966 Recommendation.

A. Correspondence with individual Governments

17. On 18 June 1999, together with the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur addressed a letter to the Government of Malaysia concerning the alleged summary dismissal of Professor Chandra Muzaffar as the Director of the Centre for Civilizational Dialogue of the University of Malaya. She has not followed up that case because Mr. Muzaffar changed his profession and is no longer working in the field of education.

18. The Special Rapporteur sent a letter to the Government of Sri Lanka on 11 August 1999 with a query about administrative requirements for admission to primary school. It was brought to her attention that the lack of citizenship and residence certificates could lead to the denial of admission to school, and displaced and stateless children were alleged to be particularly affected by these requirements. The Government's reply of 11 November 1999 confirmed that citizenship and residence certificates were required for school enrolment, and explained that new administrative regulations of May 1999 exempted from compliance, *inter alia*, "children of families displaced due to terrorist activities". As part of her work on education in emergencies, the Special Rapporteur will follow up this issue in Sri Lanka and elsewhere.

19. In her letter of 13 August 1999, the Special Rapporteur brought to the attention of the Government of Ethiopia an apparently interrelated series of events which targeted officials of the Ethiopian Teachers' Association (ETA). One of them, Dr. Taye Wolde-Semayat, was sentenced in June 1999 to long-term imprisonment. Another, Essefa Maru, was killed in 1997; he was the President of ETA at the time. The response by the Government of Ethiopia of 27 August 1999 included a summarized translation of the judgement delivered on 3 June 1999 against Dr. Wolde-Semayat and five other defendants for "organizing and arming a clandestine illegal group called Ethiopian Patriots' Front, inciting armed revolt and civil war with the intent to overthrow the legitimate government". The Government's letter noted that the results of an internal investigation into the killing of Essefe Maru revealed that he had been killed while resisting arrest and that the police had acted in self-defence. The Special Rapporteur sent a follow-up letter to the Government of Ethiopia on 19 November 2000. Her collaboration with the ILO has facilitated avoidance of duplication and has further enabled the Special Rapporteur to focus on those issues which are pertinent to her mandate, especially the impact of this series of cases on the ongoing legal reforms regarding the recruitment of teachers, their conditions of work and their evaluation.

20. On 6 June 2000, the Special Rapporteur addressed a letter to the Government of the Czech Republic concerning the process of legal reform targeting the intersection between elimination of racial and gender discrimination and minority rights with regard to Roma communities. As part of her collaboration with human rights treaty bodies, the Special Rapporteur has been working on quantitative and qualitative aspects of the equal right to education and equal rights in education. She has inquired into ongoing efforts to ensure the equal right to education and human rights in education, especially for members of the Roma minority. The portrayal of this particular minority in educational curricula and textbooks has also been brought to the Special Rapporteur's attention as a possible obstacle to their full enjoyment of the right to education. On 30 October 2000, the Government of the Czech Republic sent an "Information on the Education of the Roma Minority in the Czech Republic", which summarizes some general features of the current situation. The Government has noted that a minuscule fraction of Roma children actually declare themselves to be Roma, and the reason may well be the image of the Roma community, including in school textbooks. The Government has emphasized its positive attitude towards the education of Roma and the Special Rapporteur shall follow up this issue through correspondence with the Government and cooperation with other Special Rapporteurs, the human rights treaty bodies, and the ILO.

21. The Special Rapporteur on 6 June 2000 sent a letter to the Government of Turkey regarding mother-tongue education, specifically inquiring about a series of court cases in which criminal penalties had allegedly been imposed for offences of advocating mother-tongue education. She also requested information about the evolving interpretation of the constitutional provisions concerning education and language, apparently aimed at bringing the domestic human rights framework closer to the requirements of international human rights law. The Special Rapporteur made an effort to clarify the scope and implications of the issues she was raising through an informal meeting, and the Government on 24 November 2000 sent a letter indicating that a response was forthcoming.

22. On 6 June 2000, the Special Rapporteur addressed a letter to the Government of Israel raising her concern about the allocation of educational resources within different types of schooling, which was apparently biased against Arab schools and learners. She expressed her deep concern about the likely discriminatory impact of such budgetary allocations. The rupturing of what proved to have been virtual rather than real peace in the second half of the year 2000 diverted the focus of the United Nations to another effort at peacemaking. Problems relating to education are not likely to disappear, however, and the role of education in peacemaking and peace-building constitutes too important an issue not to be constantly kept amongst the priorities for international attention and action. The Special Rapporteur will thus follow up this subject matter as soon as it is feasible.

23. The Special Rapporteur on 12 September 2000 sent a letter to the Government of the Gambia regarding an ongoing inquiry into the quelling of a student demonstration on 10 April 2000, which reportedly resulted in numerous casualties amongst students and pupils and detentions of student leaders. That demonstration was organized in protest against previous victimization of fellow students by law enforcement personnel, which had reportedly included the rape of a schoolgirl and the beating to death of a secondary school pupil. There having been no reply by the Government, the Special Rapporteur sent a follow-up letter

on 20 November 2000, pointing out that a commission of inquiry established by the Government had reportedly finished its work. The Special Rapporteur is awaiting the results of this commission's deliberations and information on the follow-up which the Government has undertaken.

24. On 12 September 2000, the Special Rapporteur sent a letter to the Government of India concerning many reports which she has received about the violence targeting Christian schools and teachers in the period 1998-2000. She sought the cooperation of the Government in clarifying what the responses to such violence have been in individual States, especially in Gujarat, and also inquired into the portrayal of different communities in school curricula and textbooks. While fully aware of the allocations of responsibility within education between central and State governments, the Special Rapporteur emphasized the responsibility of the State in ensuring the full implementation of international human rights law binding upon it. She further clarified the multi-faceted effects of the complex problem addressed in her correspondence for the full realization of the right to education through an informal meeting. The Government's initial response followed on 8 December 2000, noting that, thus far, investigations of violence against minority schools and/or teachers have revealed "sporadic and isolated incidents in a few remote corners of the country, carried out by criminal and fringe elements". The Special Rapporteur has been greatly encouraged by the reaffirmed commitment of the Government of India not to tolerate any such violence, and is looking forward to receiving further information, especially on the work of the Minorities Cell in the federal Ministry of Home Affairs which is, as the Government emphasizes, dealing with complaints of atrocities targeting minorities. She has also been encouraged by information that the State government in Gujarat has decided to revise school curricula and textbooks because "objectionable contents" have been identified in some textbooks, in use as of 1992. She is looking forward to receiving further information about this initiative.

25. The Special Rapporteur on 14 June 2000 addressed a letter to the Government of Uzbekistan concerning alleged expulsions of schoolgirls from educational institutions owing to their wearing of headscarves. There was no reply by the Government, reportedly because her letter had not been received. The Special Rapporteur re-sent her letter on 20 November 2000 and is awaiting the Government's response.

26. On 16 August 2000 the Special Rapporteur, together with the Special Rapporteur on freedom of opinion and expression, sent a letter to the Government of Tunisia with regard to the alleged dismissal of Dr. Moncef Marzouki from his post as professor of medicine, apparently because of his human rights work. She has not followed up this case because the newly appointed Special Representative on human rights defenders is dealing with it.

27. The Special Rapporteur on 13 November 2000 sent a letter to the Government of Latvia concerning allegations she has received about children dropping out of compulsory schooling owing to particularly severe effects of impoverishment on their families. From the information she has received, it seems that rendering families homeless has figured prominently amongst reasons for the children's inability to attend school. Reasons for the evictions included the inability of the family to pay the housing rates or the electricity and heating bills. The Government sent its initial reply on 11 December 2000, highlighting the main features of the right to education in the country, describing organizations working for the rights of the child, and

confirming that social problems have been identified as an obstacle to children's education, while not specifically responding to the issue which the Special Rapporteur raised. The Government has assured the Special Rapporteur that further information would be forthcoming and she will follow this up as soon as this is feasible.

B. Overcoming widespread difficulties

28. In November 2000, the Special Rapporteur finalized the first part of her research into the linkage between the right to education and children's freedom from labour, following her initial examination of the utilization of compulsory education as an effective tool for eliminating child labour (E/CN.4/2000/6, paras. 61-65). The well-established correspondence between school-leaving age and minimum age for employment served as the benchmark, and her further work consisted of a comparative review of domestic laws which define the ages for compulsory education and the minimum age of employment. She has found that many countries could benefit from a comprehensive examination of domestic law from the perspective of the rights of the child because the gap between school-leaving age and minimum age for employment leaves children in a legal vacuum - they are above the age of compulsory schooling but below the age at which the law allows them to be employed. On 7 and 8 November 2000, the Special Rapporteur sent letters to the Governments of Bangladesh, Benin, Burundi, Cuba, the Islamic Republic of Iran, Iraq, the Lao People's Democratic Republic, Mali, Nicaragua and Vanuatu, drawing their attention to the gap between the school-leaving age and the minimum age for employment. This gap is in many cases as large as five years, with children finishing compulsory school at the age of 10 and being allowed to work at the age of 15. On 16 November 2000, the Government of Bangladesh sent a letter inquiring into the source of information, and the Special Rapporteur will use this opportunity to provide the Government with the entire background as soon as this report is ready for dissemination. The Special Rapporteur is aiming to gradually extend the coverage to all countries in the world, in cooperation with ILO/IPEC and the Committee on the Rights of the Child. It is likely that a similar problem is faced by children in many countries and the universality of human rights requires addressing it wherever it exists. Moreover, the Special Rapporteur deems it immensely useful to address those issues for which international cooperation can be instrumental in facilitating domestic change. In her correspondence with Governments, she has emphasized the need for legal reform with a view to adapting domestic law to the Convention on the Rights of the Child, pointing out that putting law into practice often necessitates targeted financial support so as to alleviate poverty-driven child labour. The Worst Forms of Child Labour Convention, 1999 (No. 182) came into force on 19 November 2000[11] and provides an excellent framework for lengthening the protection of children from the worst forms of abuse up to the age of 18 as well as obligating Governments to ensure education for the former child labourers.

29. A great deal of work remains necessary to clarify, consolidate and further develop human rights guidance for the orientation and contents of education, as discussed in Section V. Another issue which requires attention is school discipline, especially corporal punishment. The process of prohibiting and eliminating corporal punishment will be long because violence against children is part of our global heritage. Using violence to instil obedience into schoolchildren and to punish them for wrongdoing openly conflicts with the purposes of education as they are spelled out in international human rights law, translated into many domestic laws and confirmed by an increasing number of court judgments. The Special Rapporteur has started examining the

practice of States in order to discern the general pattern and trends, as well as precedent-setting court cases. Adapting education to the goals of human rights education necessitates acknowledging that children learn through example, and the lesson that might is right which corporal punishment teaches conflicts with any human rights messages that may be verbally conveyed.

30. The 10-year United Nations Girls' Education Initiative, launched at the Education for All Forum in Dakar, in April 2000, and coordinated by the United Nations Development Group (UNDG), has provided the Special Rapporteur with an excellent incentive for broadening her collaboration with UNICEF. This Initiative requires a great deal of human rights input in responding to the Secretary-General's challenge to empower girls to protect themselves against HIV/AIDS.[12] There is no need to point out how controversial human sexuality, an inevitable part of HIV/AIDS-education, has always been and how much effort is needed to design and put into practice educational modules acceptable to all relevant actors. Progress is evident from the attention paid to HIV/AIDS in current global education strategies, replacing the silence of the past two decades. Building on her long experience in dealing with the human rights dimensions of HIV/AIDS, the Special Rapporteur is planning to devote considerable attention to this issue.

C. Continuing dialogue with the World Bank

31. The Special Rapporteur has continued her dialogue with the World Bank, as the Commission on Human Rights has requested, and a great deal of correspondence has been generated on many issues where the Bank's lending policies intersect with the right to education and affect human rights in education. She visited Washington D.C. from 27 to 29 November 2000 in order to discuss the key issues with Bank officials. The Special Rapporteur would like to put on record her gratitude to Eduardo Doryan, Vice President in charge of the Human Development Network, for efficiently organizing her visit and for his kindness; to Mats Karlsson, Vice President for External Affairs, for the many practical ideas on how cooperation between the Bank and other United Nations actors could be increased; and to Ko-Yung Tung, Vice President and General Counsel, for his candid explication of the legal dimensions of the Bank's lending operations.

32. A great deal of patience has been necessary to initiate and pursue a dialogue on linking the right to education and lending for education, and the Special Rapporteur is fully aware of the long and uphill path which lies ahead. The Bank's increased resort to human rights language has facilitated her task by creating an opening for the right to education as a corrective for the Bank's lending activities, but the insertion of key human rights standards requires changes in the Bank's operative rules.[13] The enormity of this task, which will remain a challenge for the human rights community for a long time to come, has necessitated a clear and narrow focus for the Special Rapporteur in order to advance her dialogue with the World Bank, and she has chosen school fees in primary education as the first step.

1. Perils of a diffused remit

33. The World Bank's terms of reference span such diverse issues as judicial reform and rural transport, female genital mutilation and disaster risk management, ethnic conflict and child

labour. While all of these can, in one way or another, be subsumed under the notion of development in a broad sense of this term, the expertise and experience for every and any of the many diverse issues demand such a broad range of professional standards and inputs that even the estimated Bank's 12,000 employees[14] cannot possibly do justice to them all, especially because the Bank's core professional expertise lies in economics. Moreover, there are numerous existing international organizations which have been working on particular issues for a very long time and have developed considerable expertise and experience. Many are assisting developing countries through grants, which facilitate their capacity to comply with international legal obligations. The World Bank's total lending diminished in fiscal year 2000,[15] pointing perhaps to one explanation for the Bank's broadening of the areas for which it is providing loans.

34. The World Bank's new mission statement posits combating poverty with passion and professionalism. The related goal of achieving a world free of poverty requires evidence that this can be accomplished through the Bank's strategy, but, more importantly, it raises the question of accountability if it transpires that poverty is actually increasing. The World Bank's dedication to poverty reduction 30 years ago makes the posing of this question pertinent.

35. The extent to which a single institution can combine different, and sometimes mutually conflicting roles (to be a leader in capital markets and to dream about a world free of poverty), is a topic of much discussion, within and around the Bank. The Special Rapporteur has encountered this dilemma within the World Bank itself, with one part advocating the abolition of school fees in primary education in order to combat poverty and another tolerating, if not encouraging them, so as to decrease governmental budgetary allocations, and thus fiscal deficits, through cost-sharing. One example is Zambia, where "reducing cost barriers for the ultra-poor" through bursaries has been emphasized as a method for coping with school fees in primary education.[16] Alongside the absence of a commitment to making primary education free, and uncertainties as to which children will be classified as poor (or ultra-poor) to merit bursaries, this model also raises concerns about the administrative costs of collecting school fees (necessarily minuscule in poor rural Zambia) and administrating the bursaries (also minuscule). It provides, in the Special Rapporteur's view, excellent evidence as to why primary education was designed to be free.

36. Just before the Special Rapporteur's visit to the World Bank, President Clinton signed into law the 2001 Foreign Operations Appropriations Act, following the initiative of the United States Congress to abolish fees in primary education in the lending operations of the World Bank and the International Monetary Fund (IMF).[17] The Special Rapporteur will closely monitor this initiative and report to the Commission. She is also planning a mission to the United States of America, which has been provisionally scheduled to take place from 17 to 28 September 2001.

2. The need for the rule-of-law approach

37. During her visit to the World Bank in November 2000, the Special Rapporteur met with Jim MacNeill (the Chairman of the Inspection Panel), Edward Ayensu (Member of the Panel), Antonia Macedo (Assistant Executive Secretary), and Alberto Ninio (Assistant Executive Secretary). She would like to put on record her gratitude to them all for helping her to

conceptualize how best to overcome the gap between the World Bank's policies and the international human rights obligations of borrowers regarding the right to education, especially the requirement that primary education be made free of charge.

38. The Inspection Panel was set up in 1993 and has been hailed for the explicit acknowledgment that the Bank can violate individual rights which its establishment epitomized.[18] The Inspection Panel is a non-judicial body and limited to determining whether the Bank has followed its own operational policies and procedures. Its work has demonstrated how difficult it is to reconcile the requirement of accountability with the heritage of its absence. The Panel has noted that the Bank's Management "has used every possible defence to avoid an investigation" and "has consistently denied violation of policies".[19] It has mainly dealt with environmental protection and forced displacement because the Bank's binding rules have been created for these issues. Since it is the Bank's own body intended to ensure its own accountability, the Special Rapporteur requested a meeting in order to determine how practices which are obviously in conflict both with international human rights law and with the Bank's anti-poverty aims - such as school fees in primary education - could best be rectified.

39. The Panel's remit was revised twice, in 1996 and 1999. The second change has introduced a very demanding yardstick for assessing whether material adverse effects have been experienced by complainants, in terms of a deterioration compared to a without-project situation.[20] In education, this would require proof that a Bank lending operation has actually diminished access to education. This was the case in Malawi in 1982, when the then Government increased school fees, reportedly following the World Bank's advice.[21] The current slant of lending for education seems to be favouring the elimination of fees in primary education, but the heritage of the 1980s may be persisting. At that time, the Bank was endorsing "judicious use of modest fees" with an explanation that school fees would increase accountability.[22] In 1990, while noting that cost-sharing was more appropriate in post-primary education, the Bank nevertheless hailed the significant sums raised by school fees in primary education.[23] The Bank's commitment in 1992 to sustaining and enhancing social expenditure, especially for primary education (OD 8.60),[24] marked a changed approach which has been, as the Special Rapporteur noted in her progress report (E/CN.4/2000/6, para. 48), accompanied by subsequent silence about school fees. The many ongoing lending operations may include the charging of fees. Adjustment lending operations should be compatible with, at least, OD 8.60, while it is uncertain what binding rules exist, if any, for investment lending in education. All lending should probably be consistent with the overarching objective of poverty reduction. The Special Rapporteur cannot see the rationale of advocating education as a key to poverty reduction while school fees prevent poor children from access to education, thus closing off their path out of poverty. There is, as yet, no in-house mechanism to ensure that fees have been eliminated from all Bank lending and the Special Rapporteur recommends that this be made a priority.

40. The Special Rapporteur's meeting with the Inspection Panel, as well as her meeting with the Bank's General Counsel, Ko-Yung Tung, included an examination of the sources of operative rules which inform the Bank's lending operations. The former General Counsel, Ibrahim Shihata, has interpreted the remit of the Inspection Panel to be limited to "the Bank's failure to meet its standards, which are only required by itself and not by any binding rule of law".[25] This interpretation has affirmed the full exemption of the World Bank from any judicial

scrutiny because it enjoys legal immunity before domestic courts and no international litigation has ever been attempted. A unique situation thus persists whereby the World Bank is apparently bound only by those rules which it has created for itself, thus constituting a considerable challenge for all advocates of the rule of law.

41. The Panel's retrospective overview of problems which are directly relevant for the right to education has singled out the imbalance disfavouring social dimensions in the Bank's policies. [26] An effort to elevate the status of social dimensions has thus been implicitly diagnosed as necessary. In education, this requires amending operational policies so as to prioritize primary education for all, free of charge. Making this binding for all staff and consultants working in education, accompanied by wide publicity for the elimination of school fees in primary education for all affected populations, would constitute an excellent first step in the World Bank's commitment to human rights in the area of education.

III. INTEGRATING HUMAN RIGHTS IN INTERNATIONAL STRATEGIES

42. The turn of the millennium has been marked by global conferences which reviewed the decade of the 1990s and set the agenda for the future. The most important one in education, the Fourth Global Meeting of the International Consultative Forum on Education for All, took place in Dakar from 26 to 28 April 2000 and adopted the Framework for Action entitled *Education for All: Meeting Our Commitments*. This meeting was referred to as Jomtien+10 in popular parlance and it was based on the acknowledgment that commitments made at the World Conference on Education for All at Jomtien, Thailand, in 1990 had not been met. The Dakar Framework for Action has posited a "human right to benefit from an education that will benefit" one's learning needs.[27] This key formulation has not repeated the language of international human rights instruments, some of which have actually been mentioned in the adopted text. The World Bank's statement at the World Education Forum further increased confusion by referring to free primary education as a long-term plan, to be affirmed in the year 2015.[28]

43. Human rights input is therefore very much needed in translating the Dakar Framework for Action into practice, starting from the very language. The Special Rapporteur has been addressing this issue because it constitutes an indispensable prerequisite for scaling up references to human rights and transforming them into the mainstreaming of human rights. One example suffices to illustrate the necessity of reviewing statistics: the continued utilization of education statistics whose meaning may be exactly the opposite of what they purportedly show. Gross educational enrolments often reveal the failure of schooling rather than its success because the data include all over-age children, even where many are repeating the year.

44. Human rights contribution can be particularly valuable in elevating the status of education in financial allocations, internationally and domestically, relying on governmental human rights obligations, individual and collective, to accord priority to human rights. The forthcoming Special Session of the General Assembly on Children, to which the Special Rapporteur will contribute through her collaboration with UNICEF, as well as the planned global conference on financing for development, provide excellent opportunities for providing such input.

45. On 13 September 2000 the Special Rapporteur participated in the Seminar on Facilitating the Integration of Human Rights into Work on Extreme Poverty and Racism, organized by the International Service for Human Rights. Contributions from the human rights community are needed to create needed - but lacking - educational statistics so as to demonstrate how various grounds of discrimination combine to trap the new generation in a vicious downward cycle of denied rights, where the lack of access to education leads to the exclusion from the labour market, which then results in perpetuating and increasing impoverishment. To the Special Rapporteur's deep regret, many proposals, including her own, to include all internationally prohibited grounds of discrimination in the creation of education statistics were not included in the final document adopted at Dakar; this remains a challenge for the future. The Special Rapporteur will make a contribution to the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance focusing on multiple discrimination in education. She will particularly look into the impact of overlapping grounds of discrimination, such as gender, race, ethnicity, religion, or language, and suggest possible human rights remedies.

A. War as a gender issue

46. A particularly worrisome facet of intergovernmental gender policies has been the tendency to shift terminologically to gender while continuing to talk only about girls and women. War is thus not seen as a gender issue although boys are disproportionately affected by their socialization into the role of combatants. Throughout history, schooling contributed to the militarization of boys. Participation in warfare was a part of traditional initiation rituals, through which boys become men, for millions of boys. Glorification of war continues through those school textbooks which are dotted with wars and war heroes, through the promotion of violent sports, and the almost limitless commercialization of computerized war games. Education for war has, unfortunately, a much longer tradition and is more commercially attractive than education for peace, and the human rights response ought to be forged.

47. Nevertheless, education is commonly discussed in quantitative terms. In countries which have just undergone warfare, pleas for education in the name of returning to normal life often means reverting to pre-war education. The extent to which education actually contributed to warfare is questioned only if extreme examples of advocating genocide are identified. The former Special Rapporteur on the situation of human rights in Rwanda noted how successive governments conditioned the population to accept ethnic discrimination and moulded education to fit this aim by propagating a culture of mutual fear and pre-emptive self-defence.[29] Otherwise, education is assumed to have been benign, which is often not the case. Sierra Leone has provided a blatant, albeit typical, example of the contribution which education made to spawning warfare. The initial enthusiasm for mass education at independence soon gave way to the institutionalization of inequality. Mass enrolment at the beginning of primary school did not lead to mass persistence through primary and secondary education up to the university, except for the narrow elite whose children actually made it all the way up the education pyramid. Frustrated expectations of early school leavers - especially boys - have been shown to lead to criminality, violence and warfare.[30] Their abandonment to their own fate, accompanied by the paucity of lawful methods of survival, often made the choices of adolescents a foregone

conclusion. The neglect of adolescents has been an unintended consequence of the priority for primary education in global education strategies. Peace-building requires particular attention to the education of adolescents, both girls and boys. The Special Rapporteur is planning to devote considerable attention to this issue in cooperation with the Special Representative on the impact of armed conflicts on children.

B. Humanitarian and human rights approaches

48. The Special Rapporteur had her first meeting with UNHCR (Office of the United Nations High Commissioner for Refugees) on 28 June 2000 and the second on 13 September 2000, which led to cooperation in many areas of shared interest. She took part in the UNHCR/UNICEF/UNESCO consultation on education in emergencies on 8 November 2000. She has been heartened by the establishment of the Refugee Education Trust to mark the fiftieth anniversary of UNHCR and its dedication to post-primary education. The meeting on education in emergencies revealed that juveniles and/or teenagers often represent a forgotten category, and UNHCR's initiative is thus a welcome reminder that the right to education does not stop with the end of childhood.

49. An important obstacle to universalizing the right to education is a view that education is not indispensable for human survival nor required for subsistence. The absence of education for victims of armed conflicts and disasters dooms them to remain recipients of assistance while preventing them from becoming self-sustaining. Water, sanitation, medical services, shelter, clothing and food constitute the "survival package" which is offered through humanitarian relief. Including education in this package is a development of the 1990s, but overcoming the previous "ideology of survivalism" has yet to become institutionalized.

50. One particular problem has been brought to the attention of the Special Rapporteur by many individuals affected by it, namely denials of access to education based on domestic laws which are implementing the Security Council's sanctions against individual countries. United Nations human rights bodies have generally addressed this issue, with the Committee on Economic, Social and Cultural Rights noting that humanitarian exemptions do not encompass access to primary education,[31] and the Commission on Human Rights reaffirming that food and medicine should not be used as tools for political coercion[32] but not mentioning education. Deprivation of education can be encompassed by sanctions which would then, according to Marc Bossuyt's study for the Sub-Commission on the Promotion and Protection of Human Rights, constitute a violation of the right to education.[33] The Special Rapporteur is planning to continue examining the international and domestic law governing this issue so as to provide a background for the Commission's further examination of the underlying problems.

C. Debt relief

51. The linkage between alleviation of unsustainable debt burdens and increased funding for education has become stronger within HIPC-II (the Enhanced Heavily Indebted Poor Countries Debt Relief Initiative) and, while the speed of decision-making might not have kept up with the initial expectations, the commitment seems to have been sustained. The new requirement has

been the preparation of poverty reduction strategy papers (PRSPs). Because of the alphabet soup which the proliferation of such abbreviations has created, two translations of this new abbreviation have emerged: the originally intended Poverty Reduction Strategy Papers (PRSPs), and another - Public Relations Strategy Papers (PRSPs). At the time of writing, too little was publicly available for the Special Rapporteur to be able to comprehensively analyse the fate of the right to education in these strategies, and she will provide further information to the Commission as soon as sufficient documentation becomes available for drawing preliminary conclusions.

52. The importance of diverting funds from debt servicing to education has been broadly accepted, but the Special Rapporteur remains concerned about the required "demonstrable results in poverty reduction",[34] which may create difficulties where funds are allocated to primary education. Such demonstrable results are delayed since children have become adults, and evolve only where education is not the sole asset for them. Productive use of education requires land ownership, access to credit, or facilitation of self-employment where access to the labour market is limited or non-existent. On its own, education is unlikely to generate income for its beneficiaries or tax revenue for Governments. The Special Rapporteur will continue promoting interrelatedness of human rights in debt relief, advocating the integration of all pertinent human rights - the right to education, human rights in education, and human rights through education.

53. Guided by the emphasis placed by the Commission on following up country missions, during a private visit to Uganda in October 2000 the Special Rapporteur continued her close collaboration with UNICEF. As noted in the report on her mission to Uganda (E/CN.4/2000/6/Add.1, paras. 30-34), divergent policies of creditors and donors were at that time promoting education by allocating funds released through debt relief to increasing enrolments in primary education, while aggravating the pupil-teacher ratio by inhibiting recruitment of teachers so as not to increase the civil service. Although the figures varied, the pupil-teacher ratio in some schools was 130:1. In September 1999, it was announced that Uganda would benefit from additional debt relief which would enable the pupil-teacher ratio to be halved.[35] At the time, a new Poverty Reduction Growth Facility (PRGF) was announced, replacing the ESAF (Enhanced Structural Adjustment Facility), and promising that social and sectoral programmes aimed at poverty reduction would be taken fully into account.[36] In May 2000 Uganda became the first country to receive debt relief under HIPC-II.[37]

54. In her report on the mission to Uganda, the Special Rapporteur emphasized discrepancies in the official statistics, with enrolment in primary schools sometimes as high as 6.7 million and the number of teachers as low as 87,000. She was extremely concerned to learn in October 2000 that discrepancies in education statistics were addressed through police raids on schools, aimed at determining contradictions between the numbers recorded in school registers and the numbers of children in school. These may lead to diminished numbers of nominally registered children but will not solve all the discrepancies in the officially reported figures. Allocations for education within public expenditure were reported as being 10.7 per cent and 13.05 per cent for the same period by the same agency, namely the International Monetary Fund,[38] while concerns about defence expenditure do not seem to have been alleviated.[39]

D. International trade in education services and *webucation*

55. There is a long history of advances in the technology of education, with each new technological method or gadget raising hopes that a way has been found to cut short the long process of teaching and learning, that a magic bullet for education has been found. High hopes accompanying each invention have always turned into frustration and then disappointment.

56. The current obsession with information and communication technology speaks to the 5 per cent of humanity who have access to the gadgets needed to partake in *webucation*, IT-based on-line learning. The focus is on post-school learning, founded upon the assumption that people both want and need lifelong learning and that self-motivation suffices as human contact has been virtually eliminated in *webucation*. Previous attempts to make education technology intensive rather than keeping it labour intensive have vastly expanded and commercialization has been the driving force. The global *webucation* market is estimated at $50 billion,[40] which corresponds to the entire annual flow of development aid from all donors for all purposes. Profits can be increased a great deal if instead of reaching hundreds of students at university, thousands if not millions can be reached through on-line courses.

57. Frustration is much less publicized than the potential of these novelties. The latter is embodied in two-page advertisements in leading international newspapers. The former gets an occasional two-line mention, such as the results of surveys which show that people find *webucation* boring and drop out at a rate of 80 per cent.[41] The Web is likely to prove useful as a research tool but its benefits as a medium of education remain unproven. First and foremost, education of young children is local, and it is difficult to imagine families and communities replaced by *webucation*. Secondly, getting older children used to surfing and skimming in cyberspace does not bode well for their social skills, for which education is essential.

58. Overcoming the digital divide has become a hotly debated global issue and much has been promised to enhance access to up-to-date technology for schools and schoolchildren in poor regions, countries and communities. Such promises may well founder owing to the lack of electricity in many poor schools, closures of village schools in winter because of the lack of heating, gaps in teaching because the teachers' salaries have not been paid for months, or the absence of children from school because they have to walk far to school and are too hungry to make the trip.

59. It is useful in facing such questions to pause to think about what the core values are that we must protect in considering the choices to be made, as well as contemplating their consequences, both intended and unintended.

IV. RIGHTS-BASED POLICIES IN DEVELOPMENT COOPERATION

60. The commitment of an increasing number of donors to rights-based education has created an excellent opportunity - and also the need - for human rights education and training. On 24 May 2000, the Special Rapporteur held a seminar at the Department for International

Development (DFID) for the educational and human rights personnel, organized to facilitate DFID's further work on rights-based education. This was one component of the follow-up to her mission to the United Kingdom in October 1999 (E/CN.4/2000/6/Add. 2), and she has been immensely encouraged by the professionalism of the DFID staff and their commitment to adapting their work so as to advance human rights.

61. On 7 March 2000, the Special Rapporteur held a similar seminar for the professional staff working on human rights and education at Sida (the Swedish International Development Agency), which enabled her to "field-test" the presentation of human rights law to professionals working in education. The development of Sida's rights-based policy on education represents not only an increase in the number of donors committed to rights-based education but also qualitative innovations in the conceptual framework. Sida's approach to defining the right *to* education, specifying human rights *in* education, and adding rights *through* education constitutes a step forward and the Special Rapporteur is extremely appreciative of Sida's contribution.

62. On 4 September 2000, the Special Rapporteur gave a seminar on the right to education and human rights in education at NORAD (the Norwegian Agency for Development Cooperation). She has been greatly encouraged by the enthusiasm for the clarification of human rights input in the design of education strategies and by the ease with which development professionals and educationalists are coping with human rights law, which tends to be perceived as a deterrent by non-lawyers.

63. On 23 October 2000, the Special Rapporteur took part in the hearings on economic, social and cultural rights organized by the Committee on Human Rights of the German Parliament (Bundestag). The comprehensive agenda of the Committee, spanning the domestic, regional and global dimensions of economic, social and cultural rights, bodes well for the future, as does the immense interest shown for bridging the gap between the rhetoric on economic, social and cultural rights and the operative priorities at all levels. The involvement of trade unions and development organizations, combined with the input from human rights treaty bodies and thematic mechanisms, constitutes a promising model for elaborating strategies for change.

V. STREAMLINING THE HUMAN RIGHTS FRAMEWORK FOR EDUCATION

64. In her preliminary and progress reports (E/CN.4/1999/49, paras. 42-74 and E/CN.4/2000/6, paras. 30-65), the Special Rapporteur depicted the conceptual framework of governmental human rights obligations in education, which are easily structured into the 4-A scheme - to make education available, accessible, acceptable and adaptable. Her subsequent work of collecting, analysing and summarizing the jurisprudence worldwide has enriched this conceptual framework by demonstrating that the right to education is being litigated worldwide and governmental human rights obligations are being judicially affirmed and further clarified.

65. Two features of the existing jurisprudence merit emphasis. Firstly, there is an inverse proportion between the availability of education and access to remedy for its denial or violation, namely litigation tends to be confined to those parts of the world where education is both available and accessible. Securing at least primary education for all children thus remains an enduring priority, and international action is urgently needed to make the right to education truly universal. Secondly, little existing jurisprudence has been generated by human rights activists or organizations. Furthermore, this rich jurisprudence is fairly unknown within the human rights community and the lingering view whereby the right to education is deemed not to be justiciable persists. It is founded upon a classification of the right to education amongst economic, social and cultural rights, ignoring the fact that the right to education has civil and political components and these are vigorously litigated all over the world, domestically and internationally. Moreover, economic, social and cultural components are being litigated as well. The Special Rapporteur's contribution to human rights education will include making results of her work available through a public access database (www.right-to-education.org, planned to be launched on 15 March 2001), in line with the Commission's suggested model for furthering human rights education.

A. Prioritizing free and compulsory education for all children

66. In her previous reports the Special Rapporteur summarized key features of the international legal framework of the right to education, guided by the need to keep her mandate firmly grounded in international human rights law. In her preliminary report (E/CN.4/1999/49), she outlined the two pillars of human rights obligations: securing free and compulsory education for all children, and respecting freedom *of* and *in* education. In her progress report (E/CN.4/2000/6), she presented the first results of her research into the international and domestic legal framework, structured into the 4-A scheme. She has then moved on to examine domestic guarantees for the right to education to find that constitutional guarantees of free and compulsory education for all children have been adopted in the majority of countries. As the table below[42] illustrates, there are 44 countries where there is no explicit constitutional guarantee of the right to education, while there is such a guarantee in 142 countries. The practice of States thus overwhelmingly reflects the thrust of international human rights law.

67. As the table also illustrates, there is a range of countries in which the right to education is being progressively realized and international cooperation is facilitating progress in quite a few of them. The requirement of the Convention on the Rights of the Child that all children have guaranteed access to education regardless of their legal status, or that of their parents, is gradually being translated into the practice of States. However, in 37 countries the right to education is formally restricted to citizens and residents. As part of her collaboration with the Committee on the Rights of the Child and UNHCR, the Special Rapporteur has started examining access to education for those children who are likely to be facing legal obstacles, such as asylum-seekers and refugees, as well as children who are stateless.

Constitutional guarantees of free and compulsory education for all children

Countries where free and compulsory education for all is constitutionally guaranteed:	*Countries with progressive realization or partial guarantees*:
Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Haiti, Honduras, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Madagascar, Malta, Mauritius, Mexico, Netherlands, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yugoslavia	Bangladesh, Belarus, Benin, Bhutan, Cameroon, Comoros, Guinea, Guinea-Bissau, India, Iran (Islamic Republic of), Iraq, Israel, Maldives, Micronesia (Federated States of), Monaco, Mongolia, Myanmar, Namibia, Nepal, Nigeria, Pakistan, Saint Kitts and Nevis, Sierra Leone, Sudan, Togo, Uganda, United Republic of Tanzania, Uzbekistan, Zimbabwe
Countries where guarantees are restricted to citizens or residents:	*Countries with no constitutional guarantee*:
Armenia, Bahrain, Cambodia, Chad, Cyprus, Czech Republic, Democratic People's Republic of Korea, Dominican Republic, El Salvador, Equatorial Guinea, Greece, Grenada, Guatemala, Guyana, Hungary, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Libyan Arab Jamahiriya, Luxembourg, Malawi, Mali, Morocco, New Zealand, Nicaragua, Philippines, Qatar, Sao Tome and Principe, Seychelles, Slovakia, Slovenia, Syrian Arab Republic, Turkey, Turkmenistan, Vietnam, Yemen	Angola, Antigua and Barbuda, Bahamas, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Central African Republic, Côte d'Ivoire, Djibouti, Dominica, Eritrea, Ethiopia, Fiji, Gabon, Indonesia, Jamaica, Kenya, Kiribati, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malaysia, Marshall Islands, Mauritania, Mozambique, Nauru, Niger, Oman, Papua New Guinea, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Singapore, Solomon Islands, Swaziland, Tonga, Tuvalu, United States of America, Vanuatu, Zambia

68. The second pillar of the right to education, respect of freedom *of* and *in* education, cannot be easily subsumed under similar clear-cut categorizations because governmental obligations of conduct are usually accompanied by access to remedy for those who feel that their freedom has been denied or unduly constrained, and the Special Rapporteur has therefore started examining this subject matter by focusing on remedies available to the affected individuals, families and communities.

69. The absolute international priority for enhancing access to education for the millions of children who have none has necessarily led to a lesser attention to translating human rights in education into operative guidance for international and domestic actors working in education. Koïchiro Matsuura, Director-General of UNESCO, has emphasized his dedication to tackling the methods and content of education.[43] Analysis of educational curricula and textbooks promises to provide a background for conceptualizing what is commonly called "values education" amongst educationalists. The Special Rapporteur met with the new Director of UNESCO/IBE (the International Bureau of Education), Cecilia Braslavsky, on 14 September 2000 to discuss the continuation of cooperation according to the Protocol of Cooperation of 1 October 1999. The orientation and contents of education can only be studied in close collaboration between educationalists and human rights lawyers, and the Special Rapporteur is very much looking forward to this collaborative effort.

B. The emerging jurisprudence database

70. The forthcoming public access human rights resource and training service on the right to education has been founded upon the recommendation of the Commission on Human Rights for advancing human rights education.[44] The vast amount of background information which is needed to depict the international legal framework for the right to education, such as ratifications, reservations, reporting procedures, or access to international remedies, is best made available through a database. Domestic constitutional guarantees relating to the right to education, as well as provisions on direct applicability of international human rights treaties, constitute the complementary part of such background information. Domestic education laws, strategies and policies are too numerous to be collected into an easy-to-use database. Moreover, the human rights approach requires a focus on the substantive guarantees and procedural mechanisms for securing remedies when these guarantees are breached, hence the priority for jurisprudence in the Special Rapporteur's work.

71. International human rights law is not directly applicable in most countries and most human rights treaties (with the exception of those generated within the ILO) have been adopted without procedural mechanisms for international litigation of economic and social rights or the rights of the child. These two features are closely linked: domestic legal enforcement of a right is an essential prerequisite for its international enforcement. Making the existing domestic jurisprudence available promises to further the knowledge about legal enforcement of the right to education and thus strengthen its legal underpinning.

72. Large numbers of cases have been litigated, domestically and internationally, clarifying the nature and scope of the right to education and the corresponding governmental obligations. These encompass the governmental obligation to secure school attendance for all children as well as controversial school voucher schemes, which the Special Rapporteur summarized in her

progress report (E/CN.4/2000/6, paras. 39-41). Although resource allocation is perceived as an inherently political decision, intrusions into decisions on resource allocation have been necessitated by the general entitlement of all children to free and compulsory education. The first obligation relates to ensuring that education is available. English courts have held that this obligation requires the authorities to do whatever they reasonably can to comply. In one case, the duty of the local education authority to secure sufficient places at school for all children within the compulsory school age was not fully implemented and 300 children were deprived of primary education because of a shortage of teachers. The court held that the authority had done whatever was in its powers to rectify the situation and was thus not in breach of its statutory duty.[45] A group of senators in the Philippines challenged in 1991 the constitutionality of the budgetary allocation of P86 billion for debt servicing, while P27 billion were allocated for education. The Constitution of the Philippines obligates the Government to assign the highest budgetary priority to education. The issue to be decided was whether debt servicing, exceeding three times the budgetary allocation for education, was unconstitutional. The Court found that education had been the highest budgetary priority, while debt servicing was necessary to safeguard the creditworthiness of the country and thus the survival of its economy.[46] The meaning of free education was examined by the Constitutional Court of the Czech Republic upon a demand upon the State to provide textbooks and teaching materials free of charge. The Court has clarified that "free" means that in primary education the State bears the costs of establishing schools, their operation and maintenance, and should not demand tuition, adding: "The State bears the essential part of these costs, however, it is not obliged to bear all of them."[47] These few examples demonstrate that the fiscal implications of the obligation to make primary education free, compulsory and all-encompassing have been affirmed by domestic courts in different corners of the world.

C. Human rights in education as prerequisite for human rights education

73. A great deal of jurisprudence has been generated through challenges of unacceptability of education - the orientation and contents of curricula and textbooks, the rights and duties of teachers, methods of instruction, protection against violence, the language of instruction, enforcement of school discipline, the presence of religious symbols in education committed to secularism and many other issues. The Commission has emphasized that the knowledge of human rights should become a priority in education policies,[48] and the Special Rapporteur has therefore concentrated on the recognition of human rights in education as the necessary prerequisite for the teaching of human rights. Because it is well known that children learn through observation rather than exhortation, the recognition of their rights in education will greatly facilitate human rights education.

74. Human rights safeguards have been directed particularly at compulsory education because, as the United States Supreme Court has clarified, attendance is involuntary and thus compulsory education involves the coercive power of the State.[49] Respect for parental freedom to have their children educated in accordance with their religious, moral or philosophical convictions has been affirmed in all general human rights treaties and is continuously subjected to litigation. The European Court of Human Rights has affirmed that human rights law "requires the State actively to respect parental convictions within the public schools",[50] and the (former) European Commission on Human Rights added that the State's obligation to respect parental convictions "prohibits any indoctrination of pupils".[51] International human rights law also

obliges the State to respect the freedom of parents and communities to establish and operate schools. The rationale is, in the words of the Supreme Court of Spain, to remove the State's monopoly over education and protect educational pluralism.[52]

75. Domestic courts have started to recognize that children themselves have standing to vindicate their right to education and rights in education. The Supreme Court of Colombia examined a complaint by two boys who had been prevented from continuing their education by attending evening classes (they had to work during the day, being too poor to afford full-time education) because of their homosexuality. The Court faulted the school for having failed to exhibit the values of tolerance and respect of diversity, adding that a public school which posits that "homosexuality is sinful" excludes potential learners.[53] Because children can be exposed to violence by their teachers and other children, the existing jurisprudence has addressed the need to ensure their safety. The Uganda Human Rights Commission addressed a case of physical punishment of a schoolboy by his teachers, apparently prompted by the boy's attempt to enter the staff room upon a request by another teacher to fetch something. The Commission settled the case by ordering financial compensation for the boy.[54] The Supreme Court of Sri Lanka decided in April 1998 on the constitutionality of a law that aimed to outlaw and suppress, *inter alia*, verbal abuse (called ragging, bullying and/or harassment) within educational institutions. The victimization of students, especially newcomers, through verbal abuse should be outlawed, the Court has affirmed, adding that "ragging has far too long been cruel, inhuman and degrading. Our society has been unable to deal with the root causes of ragging, and the anxieties, fears and frustrations of youth on which ragging has fed and flourished."[55]

76. These examples show how much the entry of human rights has changed education law, which traditionally treated children as the object of education, specifying the rights of parents, teachers and the State. The affirmation of the best interests of the child constitutes an important step towards putting into practice the thrust of the Convention on the Rights of the Child. The Supreme Court of Canada has held that decisions should be made "from a subjective, child-centred perspective, one which attempts to make equality meaningful from the child's point of view as opposed to that of the adults in his or her life.[56] The United States Supreme Court has affirmed that First Amendment rights (free speech) apply to learners (in that specific case aged 13 to 16), which includes their right to challenge an officially prescribed orthodoxy.[57]

77. The few cases which could be referred to within the space limitations of this report demonstrate that steps towards affirming the child as the subject of the right to education have accompanied the wide recognition of the justiciability of the right to education and human rights in education. As part of the follow-up to her mission to the United Kingdom in October 1999 (see E/CN.4/2000/6/Add.2), the Special Rapporteur has been dealing with the rights of the child. Children are not legally subjects of the right to education but rather objects of agreements between their parents and their school. The need for legal reform was brought to the Special Rapporteur's attention by a group of children, who approached her to help them articulate and vindicate their rights in education and did so impressively well. By her letter of 15 November 1999, the Special Rapporteur brought to the attention of the Government of the United Kingdom the case raised by these schoolchildren who felt that their right to be consulted with regard to their own education had not been recognized during the legally mandated evaluation of their school. The Special Rapporteur is fully supportive of children being treated as the subject of the right to education, is exploring this issue as part of her collaboration with the

Committee on the Rights of the Child, treating this subject matter as a catalyst for the conceptual switch towards the full recognition of the rights of the child. The Government's response of 29 February 2000 informed the Special Rapporteur about ongoing initiatives regarding children's participation in decisions on their schooling as well as the introduction of citizenship education. According to that letter, it is only at the level of secondary school that an entitlement for children to take part in decision-making is planned to be recognized. The Special Rapporteur will follow up this issue during her planned visit to England at the beginning of the year 2001.

VI. CONCLUSIONS AND RECOMMENDATIONS

78. By its resolution 1998/33 of 17 April 1998, the Commission decided to appoint the Special Rapporteur on the right to education for an initial period of three years within its general effort to impart higher visibility to economic, social and cultural rights. The Commission's remedial action, aiming at a gradual elimination of disadvantages affecting economic, social and cultural rights, has itself faced many obstacles. One originates from the large number of mandates which have by far exceeded the capacity of the Office of the High Commissioner for Human Rights to provide support. The numerous obstacles and difficulties which the Special Rapporteur has faced in carrying out her mandate have led her to suggest as one option that her mandate not be renewed. Alternatives are to clarify her task as articulating, promoting and defending the right to education; to modify her mandate by emphasizing its features as a thematic procedure; or to broaden her mandate by combining the traditional features of thematic procedures with the promotion of the right to education through international development cooperation.

79. Education is increasingly defined as the key to development and the right to education as the key to the enjoyment of many other human rights. The reverse is seldom analysed. Like dominoes, denials of the right to education place work, social security, or political representation beyond the reach of their victims, who remain on the margins of international and domestic scrutiny.

80. The complexity of economic and social rights is evidenced in the necessity of addressing obstacles at the global, not only the domestic level. The right to education requires close cooperation between, at least, educators and educationalists, economists and human rights lawyers so as to make the mainstreaming of human rights in education strategies at all levels - from local to global - effectively reflect all its necessary components. The multidisciplinarity of human rights work requires close collaboration between different professions with each contributing its own expertise.

81. Mainstreaming human rights in global education strategies necessitates overcoming two obstacles. The first stems from the fact that there are several strategies rather than a single one, hence there is much need for human rights input. Constantly increasing references to human rights provide a valuable entry point, while cautioning against potential abuses of human rights rhetoric to legitimize denials of the right to education. The international and domestic human rights law protecting the right to education and guaranteeing human rights in education should be used as a corrective for all education strategies. The Special Rapporteur recommends to all international actors involved in promoting education to review their approach using human rights as the yardstick. This is particularly important for the World Bank, which has become the major

provider of international funding for education. The Special Rapporteur recommends an internal review of all Bank lending operations in order to identify departures from international legal requirements and undertake corrective action. As the first step, she suggests that an in-house review be carried out to identify where school fees in primary education are being charged, followed by an explicit requirement that these be abolished, and making this known to all affected populations. This would contribute towards creating the foundations upon which human rights could be mainstreamed in global education strategies.

82. The Special Rapporteur's cooperation with numerous intergovernmental actors working in education has enabled her to broach numerous discrepancies between education and the right to education and to articulate rights-based definitions. Categorizations of education into primary, elementary, fundamental, or basic are not internationally comparable and are unsuited to the requirements of international human rights law, which embodies the principle that children have to be in school until they reach the minimum age for employment. Compulsory and all-encompassing education effectively prevents child labour as well as child marriage. The international legal framework thus provides comprehensive guidance for adapting education to the rights of the child. The postulate of indivisibility and interrelatedness of human rights serves, furthermore, as simple and sensible guidance.

83. A particular benefit of the international legal framework is its comprehensiveness. The Special Rapporteur has started addressing the effects of different grounds of discrimination, especially multiple discrimination, on access to education and on accessing all other human rights through education as her contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Governmental obligations mandating an active and interventionist role of the Government to secure the right to education for all and those requiring the Government to accept and respect freedom of education and freedom in education are two sides of the same coin. The former have rightly attracted most international attention because of the continued deprivation of education which victimizes millions of children. As a consequence, most quantitative and qualitative data have been generated on the availability and accessibility of schooling. The exercise of parental choice for the education of their children, freedom to set up schools, freedom from censorship in school textbooks, or protection of the trade union freedoms of teachers are important human rights issues in education for which the human rights community ought to provide input in global and domestic education strategies. The increasing international attention to HIV/AIDS prevention poses a considerable challenge, particularly because girls are disproportionately affected, and the United Nations 10-Year Girls' Education Initiative provides an excellent framework for responding to this challenge.

84. During the first three years of her mandate, the Special Rapporteur has focused on primary education, reflecting the guidance provided her by the Commission on Human Rights. Prioritizing the securing of access to schooling for the millions of children who have none is self-evident. The unintended consequence of the priority accorded to primary and/or basic education in global education strategies has been neglect of secondary and tertiary education. Two facets require particular attention: firstly, teachers need secondary and tertiary education lest primary education become doomed to unqualified teaching staff. Secondly, the neglect of

higher education in international strategies, at the time of growing international trade in education services, is likely to jeopardize prospects for developing countries. The Special Rapporteur feels that this topic requires the Commission's attention.

85. In the process of according economic, social and cultural rights their due status, development organizations have been in the forefront of international action through endeavours such as the Campaign on the Right to Education, a joint activity of Oxfam, Education International and ActionAid. In individual countries, educationalists have been at the forefront of domestic efforts to vindicate the right to education, including through litigation. Human rights organizations have started adapting to the need to elevate the status of economic, social and cultural rights in their work and most agree that much more needs to be done. Acknowledging that the right to education exists but not accepting the necessary consequence, namely that every right can be violated and the right to education is no exception, has often been an obstacle to giving the right to education the priority it deserves.

Notes

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[2] J. Tooley, *The Global Education Industry. Lessons from Private Education in Developing Countries*, International Finance Corporation and Institute of Economic Affairs, Washington D.C. and London, 1999.

[3] Country reports prepared for the Education for All (EFA) Forum in April 2000 are available at http://www2.unesco.org/efa/wef/countryreports/home-html.

[4] K.A.L. Hyde and S. Miske, *Thematic Study: Girls' Education*, Education for All 2000 Assessment, International Consultative Forum on Education for All, 13 September 2000, p. 38.

[5] T. Valdes and E. Gomariz, *Latin American Women: Compared Figures*, Instituto de la Mujer and FLASCO (Facultad Latinoamericana de Sciencias Sociales), Santiago de Chile, 1995, p. 105.

[6] E.A. Mbilinyi, Women and gender relations in school textbooks, in: D.A. Mbilinyi and C. Omari (eds.), *Gender Relations and Women's Images in the Media*, Dar es Salaam University Press, Dar es Salaam, 1996, pp. 93-94.

[7] C. Bentall et al., *Funding Agency Contributions to Education for All*, Education for All 2000 Assessment, Thematic Studies, Overseas Development Institute, London, 11 February 2000, pp. 32-35.

[8] V. Thomas et al., *The Quality of Growth*, The World Bank & Oxford University Press, Washington, D.C./New York, September 2000, p. 68.

[9] UNICEF Innocenti Research Centre, *Young People in Changing Societies*, The MONEE Project, Regional Monitoring Report No. 7, Florence, 2000, p. 42.

[10] ILO/UNESCO - Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers, Report of the Fourth Special Session, Paris, 15-18 September 1997, CEART/SP/1997/13.

[11] The full text of the Convention as well as all information on ratification and implementation can be found at www.ilo.org.

[12] In his address launching the United Nations 10-year Girls' Education Initiative at the World Education Forum on 26 April 2000, the Secretary-General noted: "Prevented from going to school, [girls] are denied information about how to protect themselves against the virus. Without the benefit of an education, they risk being forced into early sexual relations, thereby becoming infected. Thus, they pay many times over the deadly price of not going to school."

[13] The Bank's operational policies, based on the Articles of Agreement, are formally approved by the Bank's Board and establish parameters for the lending operations. There are none for education or for human rights. Alongside environmental assessment, nine safeguard policies have been adopted for the protection of cultural property, disputed areas, forestry, indigenous peoples, international waterways, involuntary resettlement, natural habitat, pest management, and safety of dams.

[14] A. Meltzer, A better way to help the world, *Financial Times*, 24 April 2000.

[15] *The World Bank Annual Report 2000*, Washington, D.C., 2000, p. 7, 9 and 19.

[16] The World Bank - Program appraisal document on a proposed credit in the amount of SDR 28.5 million to the Republic of Zambia in support of the first phase of the Basic Education Subsector Investment Program (BESSIP), Report No. 19008 ZA, 5 March 1999.

[17] United States Congress - Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001.

[18] K. Tomaševski, The influence of the World Bank and IMF on economic and social rights, *Nordic Journal of International Law*, vol. 64, 1995, pp. 385-395.

[19] E. Umanna, (ed.), *The World Bank Inspection Panel. The First Four Years (1994-1998)*, The World Bank, Washington, D.C., November 1998, p. 324.

[20] The World Bank, Conclusions of the Board's second review of the Inspection Panel, 20 April 1999, text available at www.worldbank.org/html/extdr/ipwg/secondreview.htm.

[21] G. Psacharopoulos and M. Woodhall, *Education for Development. An Analysis of Investment Choices*, The World Bank/Oxford University Press, Washington, D.C., 1985, p. 150.

[22] The World Bank, *Education in Sub-Saharan Africa: Policies for Adjustment, Revitalization and Expansion*, Washington, D.C., 1988, p. 53.

[23] The World Bank, *Primary Education*, Washington, D.C., 1990, p. 44-45.

[24] The World Bank's adjustment lending policy, Operational Directive 8.60 of 21 December 1992, specifies that explicit conditionality may be appropriate to enhance the poverty orientation of social expenditures and to sustain their levels.

[25] I.F.I. Shihata, The World Bank Inspection Panel - A background paper on its historical, legal and operational aspects. Paper submitted to the Expert Meeting on the Inspection Panel, Lund, Sweden, 23-25 October 1997, mimeographed, p. 28.

[26] E. Umanna, (ed.), *The World Bank Inspection Panel. The First Four Years (1994-1998)*, The World Bank, Washington, D.C., November 1998, p. 326.

[27] The Dakar Framework for Action, Education for All: Meeting Our Collective Commitments, Text adopted by the World Education Forum, Dakar, 26-28 April 2000, para. 3, available at http://www2.unesco.org/wef/en-conf/dakframeng.shtm.

[28] The statement of the president of the World Bank, James Wolfenson, included this section: "Here I also want to pay special tribute to the efforts of the NGOs involved in the Global Campaign for Education. They have played an important advocacy role. We fundamentally agree with their call that by the year 2015 free education be a right for all children up to age 15." J.D. Wolfenson, A time for action: Placing education at the core of development, Presentation at the World Education Forum, Dakar, 27 April 2000, available at http://www2unecso.org/wef/en-news/coverage_speech_wolfen.shtm.

[29] Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur, (E/CN.4/1997/61 of 20 January 1997), para. 25.

[30] C. Wright, Reflections on Sierra Leone, in: S. Tawil, (ed.) - *Final Report and Case Studies of the Workshop on Educational Destruction and Reconstruction in Disrupted Societies, 15-16 May 1997, Geneva, organized Jointly by the International Bureau of Education and the University of Geneva*, Geneva, 1977, p. 21-22.

[31] Committee on Economic, Social and Cultural Rights - General Comment No. 8 - The relationship between economic sanctions and respect for economic, social and cultural rights (E/C.12/1997/8 of 12 December 1997), para. 5.

[32] Commission on Human Rights resolution 1998/11 of 9 April 1998, entitled "Human rights and unilateral coercive measures", para. 4.

[33] The adverse consequences of economic sanctions on the enjoyment of human rights: working paper prepared by Mr. Marc Bossuyt, in accordance with Sub-Commission decision 1999/111 (E/CN.4/Sub.2/2000/33 of 21 June 2000), para. 26.

[34] The World Bank, *Attacking Poverty: World Development Report 2000/2001*, Oxford University Press, New York, September 2000, p. 203.

[35] Wolfenson pledges development reform, *Financial Times*, 29 September 1999.

[36] Communiqué of the Interim Committee of the Board of Governors of the International Monetary Fund, Press release No. 99/46 of 26 September 1999 (corrected 27 September 1999), para. 5.

[37] IMF and the World Bank support debt relief for Uganda, International Monetary Fund, Press release No. 00/34 of 2 May 2000.

[38] E. Calamitsis et al., *Adjustment and Growth in Sub-Saharan Africa*, International Monetary Fund, WP/99/51, Washington, D.C., April 1999, p. 31-32; C. McDonald et al., *Income Distribution, Informal Safety Nets and Social Expenditures in Uganda*, International Monetary Fund, Washington, D.C., December 1999, p. 26.

[39] IMF completes first review of Uganda under PRGF-supported program, extends arrangement and approves US$ 11.6 million credit, International Monetary Fund, News brief No. 00/78 of 7 September 2000.

[40] J. Kelly, Learning the new lessons of global "webucation", *Financial Times*, 6 September 2000.

[41] Virtual campus, *Far Eastern Economic Review*, 21 September 2000.

[42] The Special Rapporteur has used all authoritative sources of information on the current constitutional provisions, but some of these may have been outdated or incorrectly translated and she will be grateful for all additions and corrections.

[43] K. Matsuura, Tomorrow's UNESCO, *Educational Innovation and Information*, International Bureau of Education, Geneva, No. 104, September 2000, p. 2.

[44] Commission on Human Rights resolution 2000/71 of 26 April 2000 entitled "United Nations Decade for Human Rights Education", paras. 6 and 7.

[45] *R. v. Inner London Education Authority, ex parte Ali* [1990] C.O.D. 317, [1990] 2 Admin. L.R. 822, 828B.

[46] Supreme Court of the Philippines, *Guingona, Jr. v. Carague*, G.R. No. 94571, 22 April 1991.

[47] Constitutional Court of the Czech Republic, judgement US 25/94 of 13 June 1995.

[48] Commission on Human Rights resolution 2000/71, preamble.

[49] United States Supreme Court, *Edwards v. Aguillard*, 482 U.S. 578, 19 June 1987.

[50] European Commission on Human Rights, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Applications Nos. 5095/71, 5920/72 and 5926/72, report of the Commission of 21 March 1975.

[51] European Commission on Human Rights, *Graeme v. United Kingdom*, Application No. 13887/88, Decision of 5 February 1990, *Decisions & Reports*, vol. 64, 1990, p. 158.

[52] Supreme Court of Spain, ruling of 24 January 1985.

[53] Supreme Court of Colombia, *Pablo Enrique Torres Gutierrez and José Prieto Restrepo v. Instituto Ginebra La Salle*, T-147493, judgement of 24 March 1998.

[54] Human Rights Commission of Uganda, *Mpondi Emmanuel v. Nganwa High School*, complaint No. 210 of 1998, decree of 2 July 1999.

[55] Supreme Court of the Democratic Socialist Republic of Sri Lanka, petitions Nos. 6/98 and 7/98 concerning An Act to Eliminate Ragging and Other Forms of Violence, and Cruel, Inhuman and Degrading Treatment, from Educational Institutions, 7 April 1998.

[56] Supreme Court of Canada, *Eaton v. Brant County Board of Education* [1997] 1 S.C.R., 241, para. 67.

[57] United States Supreme Court, *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 24 February 1969.